

**IN THE  
COMMONWEALTH COURT OF PENNSYLVANIA**

REPRESENTATIVE STEPHEN BLOOM : No. \_\_\_\_\_ M.D. 2016  
and REPRESENTATIVE SETH GROVE, in :  
their capacities as legislators, :

*Petitioners* :

v. :

THOMAS W. WOLF, GOVERNOR OF :  
PENNSYLVANIA, :

*Respondent* :

**APPLICATION FOR SPECIAL RELIEF  
SEEKING A PRELIMINARY INJUNCTION**

Pursuant to Pa.R.A.P. 106, 123(a) and (c), 1513, 1517, and 1532, and Pa.R.C.P. No. 1531, Petitioners, Representatives Stephen Bloom and Seth Grove, in their capacities as legislators, by and through undersigned counsel, Lamb McErlane PC, respectfully submit this Application for Special Relief Seeking a Preliminary Injunction, seeking to enjoin Respondent, Thomas W. Wolf, Governor of Pennsylvania, from dissolving and decommissioning the legislatively created

Public Employee Retirement Commission ("PERC") and forcing PERC to cease operations effective at the close of business on Friday, February 12, 2016, which would cause Petitioners (as well as Commonwealth municipalities, taxpayers and constituents) severe harm for which they have no adequate remedy at law.

**I. FACTUAL AVERMENTS**

1. This action was initiated by Petitioners filing an Original Jurisdiction Petition for Review (pursuant to Chapter 15 of the Pennsylvania Rules of Appellate Procedure) in the Nature of a Complaint in Equity Alleging the Executive Branch has Unconstitutionally Altered, Repealed and Violated a Commonwealth Statute (pursuant to Pa.R.A.P. 106 and Pa.R.C.P. Nos. 1001-1041.2) and Seeking a Declaratory Judgment (pursuant to the Declaratory Judgments Act, 43 Pa.C.S. §§ 7531 *et seq.*, Pa.R.A.P. 106 and Pa.R.C.P. Nos. 1601-1604).<sup>1</sup>

2. Petitioner Representative Stephen Bloom is a Representative from the 199<sup>th</sup> Legislative District, serving Cumberland County, and was the primary sponsor for House Bill 1793, which is a supplemental appropriation bill to provide

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<sup>1</sup> The causes of action seeking equitable relief and for declaratory judgment set forth in the Pennsylvania Rules of Civil Procedure are available in an original jurisdiction petition for review because Pa.R.A.P. 106 authorizes reliance on "general rules" applicable to practice in the courts of common pleas, that is, the Rules of Civil Procedure, so far as they may be applied in original jurisdiction actions.

funding to PERC for the Fiscal Year 2015/2016. Petitioner Bloom brings this action in his official capacity as a Representative.

3. Petitioner Representative Seth Grove is a Representative from the 196<sup>th</sup> Legislative District, serving York County. Petitioner Grove brings this action in his official capacity as a Representative.

4. Respondent, Thomas W. Wolf, is the Governor of the Commonwealth of Pennsylvania.

5. In 1981, the General Assembly enacted the Public Employee Retirement Commission Act, 43 P.S. §§ 1401 *et seq.*,<sup>2</sup> in order to establish PERC as a commission that would meet the need for a completely independent state and local pension review agency.

6. The purpose and intent of establishing PERC was to provide an ongoing mechanism to monitor public employee retirement plans in the Commonwealth of Pennsylvania and to ensure their actuarial viability by reviewing proposed changes and reforms to the plans. 43 P.S. § 1402.<sup>3</sup>

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<sup>2</sup> Act of July 9, 1981, P.L. 208, No. 66, §§ 1 *et seq.*, *as amended.*

<sup>3</sup> Act of July 9, 1981, P.L. 208, No. 66, § 2, *as amended.*

7. By statute, PERC is comprised of legislative and gubernatorial appointments. Five members of PERC are appointed by the Governor and four by the General Assembly. 43 P.S. § 1405.<sup>4</sup>

8. Since its founding, the function of PERC has been to review and provide actuarial notes to the General Assembly for all proposed pension reform legislation to determine long-term and short-term costs and savings to taxpayers.

9. PERC also reviews the health of Pennsylvania's municipal pension plans and certifies this information to the Auditor General's office, which relies on same for the distribution of state municipal pension aid.

10. Based on an annual formula calculated by PERC, the state Auditor General's office disburses funds to 2,600 municipalities to help defray the cost of their employee pensions.

11. PERC also sets the formulas which the Commonwealth uses to provide state pension aid to municipalities by calculating a tax on out-of-state insurance companies.

12. PERC's enabling legislation provides a complete list of statutory duties that PERC is mandated to perform, 43 P.S. § 1406,<sup>5</sup> which includes:

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<sup>4</sup> Act of July 9, 1981, P.L. 208, No. 66, § 5.

<sup>5</sup> Act of July 9, 1981, P.L. 208, No. 66, § 6.

a. Studying generally the subject of retirement, income after retirement, disability and death benefits and the retirement needs of public employees and formulating principles and objectives applicable thereto and recommending any new legislation it deems advisable;

b. Analyzing on its own or upon request from either the legislative or executive branch any bill relating to public employee retirement or pension policy and issuing a report thereto in a timely fashion. Such a report shall be submitted to the General Assembly and the Governor and shall include an assessment of the actuarial soundness, feasibility and cost of such legislation;

c. Establishing and reviewing plans for actuarial soundness for every public employee retirement plan;

d. Cooperating with the several State and municipal retirement and pension boards on matters of mutual concern;

e. Issuing an annual public report to the General Assembly and the Governor, including but not limited to its findings, recommendations and a summary of its activities;

f. Monitoring and evaluating from time to time all the laws and systems thereunder which relate to public employee pension and retirement policy in the Commonwealth;

g. Recommending to the General Assembly a change in the process by which public employee pension and retirement legislation is analyzed and acted upon by the Legislature;

h. Issuing actuarial notes to the General Assembly pursuant to 43 P.S. § 1407<sup>6</sup>; and

i. Performing the functions and having all the powers and duties previously vested in the Department of Community Affairs pursuant to 53 P.S. §§ 730.1 *et seq.*<sup>7</sup>

13. Pursuant to 43 P.S. § 1407(a), "no bill proposing any change relative to a public employee pension or retirement plan shall be given second consideration in either House of the General Assembly, until the commission [PERC] has attached an actuarial note prepared by an enrolled pension actuary . . . ."

14. In addition, 43 P.S. § 1407(b) states that "no amendments to any bill concerning any public employee pension or retirement plan shall be considered by either House of the General Assembly until an actuarial note prepared by an enrolled pension actuary has been attached."

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<sup>6</sup> Act of July 9, 1981, P.L. 208, No. 66, § 7, *as amended*.

<sup>7</sup> Act of December 6, 1972, P.L. 1383, No. 293, §§ 1 *et seq.*, *as amended*.

15. PERC is charged with selecting an enrolled pension actuary to prepare the actuarial note. The actuarial note is required to "include a reliable estimate of the financial and actuarial effect of the proposed change in any such pension or retirement system." 43 P.S. § 1407(c).

16. The actuarial note prepared by the enrolled actuary of PERC "shall be factual, and shall, if possible, provide a reliable estimate of both the immediate cost and effect of the bill and, if determinable or reasonably foreseeable, the long-range actuarial cost and effect of the measure." 43 P.S. § 1407(d).

17. PERC is also charged with issuing an actuarial note, prepared by an enrolled pension actuary, for any joint resolution proposing an amendment to the Constitution of Pennsylvania which initially passes either House of the General Assembly. If the joint resolution is then amended and passes either House of the General Assembly, PERC is required to have a new actuarial note prepared. 43 P.S. § 1407(e).

18. Once a bill that proposes any change to a public employee pension or retirement plan has received first consideration in either House of the General Assembly, it cannot be further considered until an actuarial note is received from PERC or twenty *legislative* days have passed. 43 P.S. § 1407(f)(1).

19. Any amendment to a bill that proposes a change to a public employee pension or retirement plan must be submitted to PERC. 43 P.S. § 1407(f)(2). The

amendment cannot then be considered until an actuarial note on that specific amendment is received from PERC or until twenty *legislative* days have passed. 43 P.S. § 1407(f)(2).

20. The General Operating Rules of the House of Representatives define "legislative day" as follows: "Legislative Day' shall mean any day that the House shall be in session."

21. Black's Law Dictionary defines "legislative day" as "[a] day that begins when a legislative body reconvenes after a recess or adjournment, and ends when the body next recesses or adjourns until a different calendar day. A legislative day may extend over several calendar days." BLACK'S LAW DICTIONARY 454 (9th ed. 2009). Twenty legislative days may extend over several months.

22. By law, the General Assembly cannot consider any pension reform legislation without an actuarial note provided by PERC. Without PERC's review, important pension reform legislation will be delayed for several months.

23. Further, the statutory requirements of PERC are subsumed within Section 19(a)(8) of the General Operating Rules of the House of Representatives, which specifically states: "[a]ny bill proposing any change relative to the retirement system of the Commonwealth or any political subdivision thereof,

funded in whole or in part out of the public funds of the Commonwealth or any political subdivision, shall have attached to it an actuarial note".<sup>8</sup>

24. For the last thirty-five years, PERC has fulfilled its role as an independent assessor of pension legislation, which is a crucial and deliberate check and balance in the legislative process.

25. On December 29, 2015, the General Assembly sent the General Appropriations Act of 2015 to Governor Wolf for his signature.

26. Included in the General Appropriations Act of 2015 was a line item appropriation for the funding of PERC's operations in the amount of \$962,000.00.

27. On December 29, 2015, Governor Wolf exercised his line item veto power and line item vetoed PERC's *entire* appropriation, leaving it with *no* funding for the 2015/2016 Fiscal Year.

28. Prior to Governor Wolf's line item veto of PERC's appropriation, PERC was operating without an appropriation for the current fiscal year due to the budget impasse.

29. During the budget impasse, PERC nonetheless continued to perform all of its statutory duties enumerated under the Public Employee Retirement

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<sup>8</sup> Article II, § 11 of the Pennsylvania Constitution authorizes the House "to determine the rules of its proceedings."

Commission Act and Governor Wolf authorized the continued payment of the salaries of PERC's employees.

30. On February 3, 2016, Governor Wolf through his Chief of Staff, Mary P. Isenhour, sent a letter to Mr. John Durbin, Chair of PERC, mandating that PERC "take all appropriate steps to immediately discontinue operations." (A true and correct copy of the February 3, 2016 letter is attached as Exhibit "A" hereto.)

31. The February 3, 2016 letter further states that the employment of all PERC staff, including the Executive Director and all other employees, must be discontinued no later than the close of business on February 12, 2016.

32. The February 3, 2016 Letter also states that the Office of Administration will "assist with possible placement of those [PERC] employees who may wish to continue their Commonwealth employment."

33. The February 3, 2016 letter conveys in unequivocal terms that Governor Wolf unilaterally decided to decommission PERC in that the correspondence specifically directs that "PERC must immediately conclude its business operations".

34. Governor Wolf's actions as described above will have massive detrimental repercussions throughout the Commonwealth.

35. PERC is required to certify municipal pension data that is used to distribute state aid under the Municipal Pension Plan Funding Standard and

Recovery Act ("Act 205"), 53 P.S. §§ 895.101 *et seq.*,<sup>9</sup> for municipal pension plans.

36. More than \$250,000,000 in state pension aid is dispersed to 2,600 municipalities each year, which is contingent upon PERC providing the information needed to issue those funds.

37. Governor Wolf's attempted decommissioning of PERC will be effective a mere six weeks before the biannual reports from the 2,600 municipalities are due in PERC's office. These biannual reports are used to allocate the \$250,000,000 in state pension aid to the municipalities.

38. Without PERC and the critical mandated functions that it performs, the Act 205 state aid payments cannot properly be made resulting in municipalities not being able to meet their pension obligations.

39. Municipalities that cannot make the pension payments will be forced to raise taxes to make up the difference or risk increasing their unfunded municipal pension liability.

40. Moreover, upon information and belief, Governor Wolf intends to disperse PERC's functions in such a manner that would defeat the General Assembly's intent in establishing PERC, which is to have a completely independent review agency.

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<sup>9</sup> Act of December 18, 1984, P.L. 1005, No. 205, §§ 101 *et seq.*, *as amended*.

41. Upon information and belief, Governor Wolf intends to have the Pennsylvania Municipal Retirement System ("PMRS") in charge of calculating the amount of money its members receive and whether the municipality is contributing enough local funds to make the pension payments that are due.

42. Allowing PMRS to, in effect, regulate itself defeats the purpose of PERC, which was to perform these duties as an independent, unbiased agency.

43. In fact, there have been instances in which various Pennsylvania retirement systems submitted conflicting actuarial reports, each of which had a vested interest in the results of the actuarial reports. In such instances, PERC further fulfilled its role as an impartial agency by preparing and submitting an unbiased actuarial report to be relied upon by the involved parties.

44. Upon information and belief, due solely to Governor Wolf's actions, some or all of the long-time employees of PERC, who have been employed by PERC for a period ranging from eight to twenty-nine years, are in the process of ceasing their job functions and the Office of Administration is in the process of transferring those employees to other Commonwealth employment.

45. Upon information and belief, Petitioners aver that on or about Friday, February 12, 2016, as a result of Governor Wolf's aforementioned directive, the Pennsylvania Office of the Budget will assume the duties and functions of PERC.

46. Upon information and belief, Petitioners aver that three current employees of PERC, Bernard S. Kozlowski, Rosalie M. Hutchinson and Brian D. Bowers, have already been or will soon be issued new State ID badges that will identify them as employees of the Pennsylvania Office of the Budget.

47. Upon information and belief, Petitioners aver that Brian Bowers, an employee of PERC, was recently contacted by the Bureau of State Employment and offered a position at the Pennsylvania Department of Community and Economic Development.

48. Upon information and belief, Petitioners aver that Antonio Parisi, an employee of PERC, has interviewed and accepted a position with the Public School Employees Retirement System to begin on or about Friday, February 12, 2016.

49. Other of PERC's duties are being dispersed to other agencies including the Auditor General's office.

50. Upon information and belief, Petitioners aver that as a result of Governor Wolf's aforementioned directive, on or about Friday, February 12, 2016, the Chairman of the PERC Board, John T. Durbin, will issue a letter to the Pennsylvania Office of the Budget which purports to relinquish the duties and functions of PERC to the Pennsylvania Office of the Budget.

51. Upon information and belief, Petitioners aver that once the Pennsylvania Office of the Budget assumes the duties and functions of PERC, the Governor's Office of General Counsel will issue letters to all affected Commonwealth municipalities and other interested parties informing them of the recent changes with PERC.

52. Upon information and belief, Petitioners aver that once the Pennsylvania Office of the Budget assumes the duties and functions of PERC, that office will enter into Memoranda of Understanding with the State Employees Retirement System and the Public School Employees Retirement System for those two entities to perform the actuarial work required under the Public Employee Retirement Commission Act and to issue actuarial notes on pending pension legislation and attendant amendments.

53. Upon information and belief, Petitioners aver that no documentation exists to confirm paragraphs 44 through 52, *supra*, due to the fact that all entities involved were instructed by the Administration not to reduce any of these verbal agreements to writing.

54. On February 10, 2016, a mere two days prior to Governor Wolf's intended decommissioning of PERC, PERC's Chairman, John T. Durbin, issued a letter to Representative Gene DiGirolamo and copying twenty-four other elected officials, on Document Number 07944, which states that "[u]nder the Public

Employee Retirement Commission Act (Act 66 of 1981), the Commission has a *mandated responsibility* to review any legislative changes that affect public employee retirement systems." (Emphasis supplied.)

55. The General Assembly already has been affected by Governor Wolf's self-created emergency, which will effectively stop or at least unduly delay future pension legislation from moving forward.

56. If the General Assembly is unable to promptly and efficiently enact a pension bill, it will be fatally hamstrung in performing its legislative function in that area of the law.

57. On or about January 22, 2016, Chairman Adolph received a letter from PERC informing him that PERC will not be issuing an actuarial note on House Bill 1499 until such time as the budget impasse has ended.

58. On or about January 22, 2016, Chairman William Adolph of the House Appropriations Committee received a letter from PERC informing him that PERC will not be issuing an actuarial note on House Bill 1499 until such time as the budget impasse has ended.

59. On February 10, 2016, the House of Representatives gave second consideration to House Bill 1793.

60. Also on February 10, 2016, PERC's Executive Director, James L. McAneny, issued an advisory note on House Bill 1499, Printer's Number 2713, rather than the requested actuarial note.

61. Upon information and belief, the advisory note on House Bill 1499, Printer's Number 2713, issued by PERC on February 10, 2016, was issued in lieu of the requested actuarial note because PERC is being decommissioned by the Governor effective close of business on or about Friday, February 12, 2016, and was instructed to conclude all work by the close of business on Friday, February 12, 2016.

62. Without an actuarial note, the Pennsylvania House of Representatives will not be able to consider House Bill 1499 on second consideration until such time as twenty legislative days have passed since January 21, 2016, or until approximately May 4, 2016.

## **II. RELIEF SOUGHT IN THE PETITION FOR REVIEW**

63. In the Petition for Review, Petitioners sought the following relief:

64. That this Court issue a permanent injunction:

a. Enjoining Governor Wolf from decommissioning PERC, making any attempts to direct PERC to cease its operations or to cease performing its statutory duties as set forth in PERC's enabling legislation;

b. Enjoining Governor Wolf from transferring PERC's statutory duties and responsibilities to any other Commonwealth governmental agency, board, commission, department or entity;

c. Enjoining the Governor from making any attempts to remove any PERC employees or staff members from PERC, regardless of whether the Governor or his agents and representatives seek to provide those employees with other Commonwealth employment; and

d. Granting such other and further relief as this Honorable Court deems just and proper.

65. That this Court issue a declaratory judgment pursuant to Section 7533 of the Declaratory Judgments Act, 42 Pa.C.S. § 7533:

a. Declaring that Governor Wolf has violated PERC's enabling legislation and separation of powers principles in the Pennsylvania Constitution by directing PERC to cease its operations;

b. Declaring that Governor Wolf has no lawful authority to transfer PERC's statutory duties and responsibilities to any other Commonwealth governmental agency, board, commission, department or entity;

c. Declaring that Governor Wolf has no lawful authority to direct PERC to cease its operations or transfer its employees to other Commonwealth employment; and

d. Granting such other and further relief as this Honorable Court deems just and proper.

### **III. SPECIAL RELIEF SOUGHT HEREIN**

66. Petitioners have a clear right of relief to a preliminary injunction enjoining Governor Wolf from dissolving and decommissioning PERC and forcing PERC to cease operations effective at the close of business on Friday, February 12, 2016.

67. The purpose of a preliminary injunction is to preserve the status quo and prevent imminent and irreparable harm which might occur before the merits of the case can be heard and determined. *Soja v. Factoryville Sportsmen's Club*, 522 A.2d 1129, 1131 (Pa. Super. 1987).

68. Preliminary injunctive relief is also appropriate where necessary to restore the parties to their status immediately prior to the wrongful conduct of which the movant complains. *Commonwealth v. Coward*, 414 A.2d 91, 99 (Pa. 1980).

69. "The status quo to be maintained by a preliminary injunction is the last, actual, peaceable and lawful uncontested status which preceded the pending

controversy". *Valley Forge Historical Soc'y v. Washington Mem'l Chapel*, 426 A.2d 1123, 1129 (Pa. 1981).

70. Under Pennsylvania law, the essential prerequisites for a preliminary injunction are:

(1) the injunction is necessary to prevent immediate and irreparable harm that cannot be compensated adequately by damages; (2) greater injury would result from refusing the injunction than from granting it, and, concomitantly, the issuance of an injunction will not substantially harm other interested parties in the proceedings; (3) the preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct; (4) the party seeking injunctive relief has a clear right to relief and is likely to prevail on the merits; (5) the injunction is reasonably suited to abate the offending activity; and, (6) the preliminary injunction will not adversely affect the public interest.

*Warehime v. Warehime*, 860 A.2d 41, 46-47 (Pa. 2004) (citing *Summit Towne Centre, Inc. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995, 1001 (Pa. 2003)).

71. Here, all elements required for the issuance of a preliminary injunction are met.

72. First, an injunction is necessary in this case to prevent immediate and irreparable harm that cannot be adequately compensated by damages.

a. The Governor's power is to execute the laws and not to create or interpret them. *Shapp v. Butera*, 348 A.2d 910, 914 (Pa. Cmwlth. 1975).

b. The Governor may not act contrary to any constitutional or statutory provision. *Id.*

c. Instead, the General Assembly is vested with the legislative power of the Commonwealth. PA. CONST. art. II, § 1.

d. "The legislative power is the power to 'make, alter and repeal laws.'" *Jubelier v. Rendell*, 953 A.2d 514, 529 (Pa. 2008) (quoting *Blackwell v. State Ethics Comm'n*, 567 A.2d 630, 636 (Pa. 1989)).

e. Governor Wolf's actions described herein violate separation of powers principles in the Pennsylvania Constitution and violate PERC's enabling legislation.

f. Governor Wolf's direction, by executive fiat, that PERC cease all operations is invalid and unlawful because it does not serve to implement or supplement statutes or the Pennsylvania Constitution, but rather it effectively seeks to alter and repeal the legislation that created PERC, which is a power reserved solely for the General Assembly.

g. Governor Wolf is improperly decommissioning PERC without securing the passage of required legislation, thereby circumventing the only legally proper means by which to conclude or disperse PERC's operations.

h. In his unlawful use of power to decommission PERC, Governor Wolf is violating the Legislature's province in making the law of the Commonwealth.

i. The separation of powers principles in the Pennsylvania Constitution preclude the Governor from interfering with and usurping the General Assembly's function to perform as a legislative body.

j. The Governor does not have the unilateral authority to decide which other agencies shall perform PERC's current duties and authorities, which the General Assembly enacted.

k. To properly and legally transfer PERC's essential duties as enacted by the Legislature requires a statutory change, a function which can only be performed and accomplished by the Legislature, not the Governor.

l. A violation of express statutory provisions, such as PERC, constitutes irreparable harm *per se*. *See, e.g., Keller v. Casey*, 595 A.2d 670, 674 (Pa. Cmwlth. 1991).

m. Indeed, the violation of a statute constitutes immediate and irreparable harm and issuing injunctive relief to avoid such a violation is justified. *Central Dauphin Educ. Ass'n v. Central Dauphin Sch. Dist.*, 792 A.2d 691, 698 (Pa. Cmwlth. 2001) (citing *Public Utility Comm'n v. Isreal*, 52 A.2d 317, 321 (Pa. 1947)).

73. Second, greater injury would result from refusing an injunction than from granting it, and issuance of an injunction will not substantially harm other interested parties in these proceedings.

a. As outlined above, at least one request for an actuarial note was submitted to PERC prior to Governor Wolf's February 3, 2016 Letter ordering PERC to cease its operations.

b. If PERC no longer exists, it will be impossible for the General Assembly to receive the actuarial notes required by 43 P.S. § 1407(a).

c. Without an actuarial note, any pension legislation that is given first consideration by either the House of Representatives or the Senate will automatically be forced to be put on hold for twenty legislative days, causing an extraordinary delay and interfering with the role of the General Assembly.

d. Moreover, if PERC no longer exists, it would be impossible to submit and subsequently receive the required actuarial notes on amendments to pending pension legislation in accordance with 43 P.S. § 1407(f)(2).

e. The decommissioning of PERC by Governor Wolf would require Petitioners to violate the statutory requirement found in 43 P.S. § 1407(f)(2) in order to consider any amendments to pending pension legislation.

f. Alternatively, the decommissioning of PERC interferes with the legislative process and would cause harm to Petitioners as they would no longer have the ability to file amendments to pending pension legislation.

g. The decommissioning of PERC would cause PERC's Executive Director and others who are employed by PERC to be unable to perform their vital, statutorily required responsibilities for the benefit of all Pennsylvania public employees.

h. In addition, Governor Wolf's direction to the Office of Administration "to assist with possible placement of those employees who may wish to continue their Commonwealth employment", which Petitioners believe and therefore aver is actively occurring, further unlawfully usurps the role of the Legislature by enabling the removal from PERC those employees who are vital to PERC's ongoing operations.

i. Clearly, the irreparable harm caused by Governor Wolfs' violation of separation of powers principles in the Pennsylvania Constitution and Governor Wolf's violation of PERC's enabling legislation far outweighs any harm that will be caused by enjoining Governor Wolf from dissolving and decommissioning PERC and forcing PERC to cease operations. Any harm to Governor Wolf or to the public clearly is negligible, if not non-existent.

74. Third, a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct.

a. Here, the alleged wrongful conduct is Governor Wolf's unlawful attempt to dissolve and decommission PERC and force PERC to cease operations.

b. A preliminary injunction enjoining Governor Wolf from dissolving and decommissioning PERC and forcing PERC to cease operations restores the status quo as it existed prior to Governor Wolf's unlawful and unreasonable conduct.

75. Fourth, Petitioners have established a clear right to relief and the likelihood of success on the merits.

a. "To establish a clear right to relief, the party seeking an injunction need not prove the merits of the underlying claim, but need only demonstrate that substantial legal questions must be resolved to determine the rights of the parties." *SEIU Healthcare Pennsylvania v. Commonwealth*, 104 A.3d 495, 506 (Pa. 2014); *see also Fisher v. Department of Pub. Welfare*, 439 A.2d 1172, 1174 (Pa. 1982) ("it is obvious that the 'clear right' requirement is not intended to mandate that one seeking a preliminary injunction establish his or her claim absolutely.").

b. Here, the substantial legal questions to be resolved to determine the rights of the parties are whether Governor Wolf's actions described

herein: (1) violate separation of powers principles in the Pennsylvania Constitution; and (2) violate PERC's enabling legislation.

c. Governor Wolf's action of directing that PERC cease all operations and find alternative Commonwealth employment for PERC employees, and transferring PERC's statutorily duties and responsibilities to another Commonwealth governmental entity, stands to unlawfully increase the power of the Executive Branch at the expense of the other branches of government and would violate separation of powers principles in the Pennsylvania Constitution.

d. Accordingly, there exists a genuine, justiciable controversy between Petitioners and Respondent as to whether Governor Wolf has the lawful authority to direct that PERC cease all operations, that PERC's employees be moved to alternative Commonwealth employment, and transfer PERC's statutorily duties and responsibilities to another Commonwealth governmental entity.

e. Accordingly, Petitioners have established a clear right to relief. *SEIU Healthcare Pennsylvania*, 104 A.3d at 506.

76. Fifth, the injunction Petitioners seek is reasonably suited to abate the offending activity.

a. Petitioners merely seek a preliminary injunction enjoining Governor Wolf from dissolving and decommissioning PERC and forcing PERC to cease operations.

b. The preliminary injunction sought by Petitioners is narrowly tailored and clearly is reasonably suited to abate Governor Wolf's offending activity.

77. Sixth and finally, a preliminary injunction will not adversely affect the public interest.

a. Clearly, the irreparable harm caused by Governor Wolfs' violation of separation of powers principles in the Pennsylvania Constitution and Governor Wolf's violation of PERC's enabling legislation far outweighs any harm that will be caused by enjoining Governor Wolf from dissolving and decommissioning PERC and forcing PERC to cease operations.

b. The relief requested herein will not negatively impact Pennsylvanians' interests, and any harm to Governor Wolf or to the public clearly is negligible, if not non-existent.

c. In fact, the public interest is best served by ensuring any legislation that impacts or proposes changes relative to a public employee pension or retirement plan be considered in a timely fashion by those statutorily authorized to do so, and properly evaluated by the Legislature.

78. Based on the foregoing, Petitioners have established the six criteria necessary for the issuance of a preliminary injunction.

WHEREFORE, Petitioners respectfully prays this Honorable Court:

a. Enter a preliminary injunction enjoining Governor Wolf from decommissioning PERC, making any attempts to direct PERC to cease its operations or to cease performing its statutory duties as set forth in PERC's enabling legislation;

b. Enter a preliminary injunction enjoining Governor Wolf from transferring PERC's statutory duties and responsibilities to any other Commonwealth governmental agency, board, commission, department or entity;

c. Enter a preliminary injunction enjoining the Governor from making any attempts to remove any PERC employees or staff members from PERC, regardless of whether the Governor or his agents and representatives seek to provide those employees with other Commonwealth employment; and

d. Grant such other and further relief as this Honorable Court deems just and proper.

Respectfully submitted,

**LAMB McERLANE PC**

Dated: February 12, 2016

By: /s/ Joel L. Frank

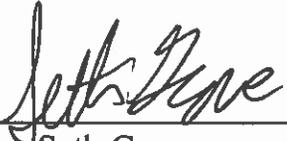
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*Counsel for Petitioners*

**VERIFICATION**

I, Seth Grove, verify and affirm that the statements made in the foregoing Application for Relief are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date: February 12, 2016

  
\_\_\_\_\_  
Seth Grove

**EXHIBIT "A"**



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF THE GOVERNOR  
HARRISBURG

February 3, 2016

Mr. John Durbin, Chair  
Public Employee Retirement Commission  
510 Finance Building  
613 North Street  
PO Box 1429  
Harrisburg 17105-1429

Dear Mr. Durbin:

As you are aware, the General Appropriation Act of 2015, the Act of December 29, 2015 (P.L. \_\_, No. 10A) (Act 10A), did not contain an appropriation for the Public Employee Retirement Commission (PERC) for Fiscal Year 2015-2016. There are no appropriated funds from which to cover operational expenses, salaries and benefits, or expense reimbursements. As we discussed yesterday, it is necessary for PERC to take all appropriate steps to immediately discontinue operations.

The employment of all PERC staff, including the Executive Director and all other employees, must be discontinued no later than the close of business on February 12, 2016. Without an appropriation under Act 10A, the Office of the Budget has no legal authority to pay PERC employee salaries and wages. *See also* 43 P.S. § 1406(a) (7) (authorizing the hiring of staff only "within the limits of the appropriations available"). The Office of Administration will work with you to assist with possible placement of those employees who may wish to continue their Commonwealth employment.

The lack of appropriated funds also prevents the payment of PERC's operational expenses. Therefore, PERC must immediately conclude its business operations. See, for example, 43 P.S. § 1406(a) (7) (authorizing the contracting for consultant services only "within the limits of the appropriations available"). The Department of General Services can assist with the disposition of PERC's property, and the Office of Administration, Office for Information Technology can handle the discontinuation of IT services. Also, PERC's records should be reviewed and retained in accordance with applicable records retention policies.

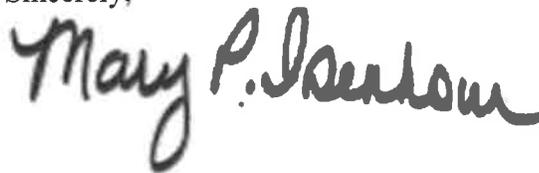
PUBLIC EMPLOYEE  
FEB 02 2016  
RETIREMENT COMMISSION

Mr. John Durbin, Chair  
February 2, 2016  
Page Two

It is possible that PERC has projects that are underway, but will not be finished by February 12, 2016. To ensure the completion of any pending work, and to ensure that PERC's statutory obligations are met, PERC may wish to consider entering into agreements with the State Employee Retirement Board, Public School Employees Retirement Board, and other Commonwealth agencies to assist PERC in performing those services that it no longer has funding to provide.

Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink that reads "Mary P. Isenhour". The signature is written in a cursive style with a large, prominent "M" and "P".

Mary P. Isenhour  
Chief of Staff

cc: Denise J. Smyler, General Counsel  
Randolph Albright, Secretary of the Budget  
Sharon P. Minnich, Secretary of Administration

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

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**PROOF OF SERVICE**

I hereby certify that this 12th day of February, 2016, I have served the attached document(s) to the persons on the date(s) and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

**Service**

Served:	Attorney General
Service Method:	eService
Service Date:	2/12/2016
Address:	Strawberry Square 16th Floor Harrisburg, PA 17120
Phone:	(71-7) -787-3391
Served:	Kathleen Kane
Service Method:	Personal Service
Third Party:	
Service Date:	2/12/2016
Address:	Strawberry Square 16th Floor Harrisburg, PA 17120
Phone:	--
Representing:	Respondent Kathleen Kane
Served:	Thomas W Wolf
Service Method:	Personal Service
Third Party:	
Service Date:	2/12/2016
Address:	333 Market Street, #17 Harrisburg, PA 17101
Phone:	--
Representing:	Respondent Thomas W Wolf

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

*/s/ Scot Russel Withers*

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*(Signature of Person Serving)*

Person Serving: Withers, Scot Russel  
Attorney Registration No: 084309  
Law Firm: Lamb McErlane, PC  
Address: 24 E Market Box 565  
West Chester, PA 193810565  
Representing: Petitioner Bloom, Stephen  
Petitioner Grove, Seth