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SUPREME COURT OF PENNSYLVANIA

66 WAP 2017

COUNTY OF BUTLER,

Appellee,

v.

CENTURYLINK COMMUNICATIONS, LLC; THE UNITED TELEPHONE COMPANY OF PENNSYLVANIA LLC; CONSOLIDATED COMMUNICATIONS OF PENNSYLVANIA COMPANY, LLC; CONSOLIDATED COMMUNICATIONS ENTERPRISE SERVICES, INC.; CORE COMMUNICATIONS, INC.; INTERMEDIA COMMUNICATIONS OF FLORIDA, INC.; VERIZON PENNSYLVANIA LLC (F/K/A VERIZON PENNSYLVANIA, INC.); LEVEL 3 COMMUNICATIONS, LLC; TELCOVE OF EASTERN PENNSYLVANIA; AT&T CORP.; TELEPORT COMMUNICATIONS AMERICA, LLC; US LEC OF PENNSYLVANIA, INC.; BANDWIDTH.COM CLEC, LLC; COMCAST PHONE OF PENNSYLVANIA, LLC; PEERLESS NETWORK OF PENNSYLVANIA, LLC,

Appellants.

BRIEF OF AMICI CURIAE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE PENNSYLVANIA CHAMBER OF BUSINESS AND INDUSTRY IN SUPPORT OF APPELLANTS

Appeal from the June 8, 2017 Order of the Commonwealth Court, reversing and remanding the August 11, 2016, and September 8, 2016 Orders of the Court of Common Pleas of Butler County

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STATEMENT OF INTEREST

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation, representing 300,000 direct members and indirectly representing an underlying membership of more than three million U.S. businesses and professional organizations of every size and in every economic sector and geographic region of the country. One of the Chamber's most important responsibilities is to represent its members' interests before the courts, Congress, and the Executive Branch. To that end, the Chamber regularly files *amicus* briefs in cases that raise issues of vital concern to the nation's business community.

The Pennsylvania Chamber of Business and Industry ("PA Chamber") is the largest broad-based business association in Pennsylvania. Thousands of members throughout the Commonwealth employ greater than 50 percent of Pennsylvania's private workforce. The PA Chamber's mission

is to improve Pennsylvania's business climate and increase the competitive advantage for its members.

These two Chambers file this brief in order to assist this Court in evaluating the County's ability to assert common law claims against the Defendants despite the plain language of the statute vesting enforcement authority for the 911 Act, 35 Pa.C.S. § 5301, *et seq.*, solely in the Pennsylvania Emergency Management Authority. The Chambers also explain the various policy considerations that counsel in favor of enforcing the statutory text as written, rather than allowing for separate common law causes of action to be brought by the County against the Defendants.

No one other than the *amici*, their members, or their counsel paid for the preparation of this *amici curiae* brief or authored this brief, in whole or in part.

SUMMARY OF ARGUMENT

At issue in this case is whether Butler County has a right to assert common law causes of action against local telephone companies for allegedly violating Pennsylvania's 911 Act, 35

Pa.C.S. § 5301, *et seq.* Both the Commonwealth Court and the Court of Common Pleas of Butler County recognized that the 911 Act vests the authority to enforce the Act with the Pennsylvania Emergency Management Agency ("PEMA"). (App'x A at 9; App'x B at 9-11.) The Court of Common Pleas concluded that, because PEMA has exclusive authority to enforce the 911 Act, the County is unable to maintain separate common law causes of action against telephone companies for allegedly violating the Act. (App'x B at 9-11.)

The Commonwealth Court reversed the trial court and held that the County is able to bring its common law causes of action. (App'x A at 10-11.) In holding that the County's common law claims were not foreclosed, the Commonwealth Court incorrectly interpreted the 911 Act and impermissibly substituted its own judgment regarding the appropriate remedies for those of the General Assembly.

This litigation also raises serious policy and constitutional concerns, as this litigation was initiated after a contingency fee consultant solicited counties across the Commonwealth to

bring virtually identical suits against more than eighty companies alleging a violation of the 911 Act. Even more problematic is the fact that the County is not represented by government lawyers, but is instead represented by contingency fee counsel. As this Court is aware, such contingency fee representation agreements between private counsel and public entities creates a host of concerns. First, contingency fee counsel are motivated by their desire to recover the largest fees possible, regardless of whether the interests of the public are being adequately served. Relatedly, contingency fee counsel are prone to overreaching. Finally, enforcement actions that are driven by contingency fee counsel, such as these 911 Act cases, come with substantial costs to the public generally and undermine the government's role in neutral enforcement of the law.

Because *amici*'s members are being targeted with increasing frequency by private contingency fee attorneys seeking large recoveries on behalf of state and local governments around the country, *see, e.g.*, U.S. Chamber

Institute for Legal Reform, *Privatizing Public Enforcement: The Legal, Ethical, and Due Process Implications of Contingency-Fee Arrangements in the Public Sector* 3-5 (2013), *amici* urge this Court to consider the negative implications of allowing such contingency fee representation arrangements.

ARGUMENT

I. The 911 Act Vests Sole Enforcement Authority with PEMA.

This Court has repeatedly recognized that "[i]n all matters involving statutory interpretation," the starting place for the analysis must be 1 Pa.C.S. § 1921(a), "which provides that the object of interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly." *Commonwealth v. McCoy*, 962 A.2d 1160, 1166 (Pa. 2009). Moreover, "[a] statute's plain language generally provides the best indication of legislative intent." *Id.* (citations omitted).

In looking at the plain language of the 911 Act, both lower courts correctly determined that only PEMA, and not counties, has statutory authority to enforce the billing provisions of the

Act. Defendants persuasively explain why that conclusion is correct, and *amici* will therefore not rehash the same arguments here. *Amici* write to underscore the flaws in the Commonwealth Court's conclusion that counties have common law authority to enforce the billing provisions of the Act even though the Act itself does not provide for such authority.

II. The Commonwealth Court Incorrectly Held that Counties Could Nevertheless Sue Under the 911 Act Based on Vague Standards of "Directness."

Amici urge the Court to reject the Commonwealth Court's determination that, despite the plain language of the 911 Act, the County can still pursue common law causes of action against Defendants. If the Court allows the Commonwealth Court's holding regarding the availability of common law causes of action to stand, the implication for the business community as a whole may well be staggering.

The Commonwealth Court held that, despite the clear delegation of enforcement authority to PEMA under § 5303 and the now-repealed § 5311.13, PEMA does not have *exclusive* authority to enforce against telephone companies the billing

provisions of the 911 Act. The Commonwealth Court reached this conclusion despite the mandate of 1 Pa.C.S. § 1504, which states,

> In all cases where a remedy is provided or a duty is enjoined or anything is directed to be done by any statute, the directions of the statute shall be strictly pursued, and no penalty shall be inflicted, or anything done agreeably to the common law, in such cases, further than shall be necessary for carrying such statute into effect.

This Court has "consistently construed" § 1504 and its predecessor as "requir[ing] a party to strictly follow a statutory remedy, when one is provided, to the exclusion of a common law claim." *White v. Conestoga Title Ins. Co.*, 53 A.3d 720, 731 (Pa. 2012) (citing *Pittsburgh Coal Co. v. Sch. Dist. of Forward Twp.*, 78 A.2d 253, 256 (Pa. 1951)). Indeed, only "where the legislature explicitly reveals in a statute that it does not intend for such exclusivity [does] a statutory procedure for dispute resolution . . . not preempt common law claims." *Id.* at 733.

The Commonwealth Court never attempted to explain why the common law claims asserted by the County were not foreclosed by the 911 Act itself. The Commonwealth Court

recognized that under the 911 Act, only PEMA was granted enforcement authority. (App'x A at 10.) If the Court followed § 1504 and *White*, that should have been the end of the inquiry—the General Assembly vested exclusive enforcement authority in PEMA to the exclusion of all other enforcement mechanisms, including common law claims such as those brought by the County here. Instead, the Commonwealth Court inexplicably concluded, without any support, that PEMA's enforcement authority was not exclusive. (*Id.*)

Rather than addressing the Defendants' argument under § 1504 and the associated cases, the Commonwealth Court attempted to distinguish this case because "there is a much more direct relationship between the alleged violations of the 911 Act by the Service Providers and the impact on the County" than in cases such as *Petty v. Hospital Service Association of Northeastern Pennsylvania*, 23 A.3d 1004 (Pa. 2011). (App'x A at 13.) The Commonwealth Court further found that, in this case, "the County allegedly suffered a direct harm from the alleged undercharging and failure to charge by" the Defendants. (*Id.*)

It is apparent from the Commonwealth Court's opinion that it relied on notions of "directness" in finding that the County was able to assert common law causes of action against the Defendants, despite the lack of such enforcement authority in the text of the 911 Act itself. This notion of "directness" is troublesome. First, the concept of a "direct harm," or even worse, a "much more direct relationship" is too amorphous to serve as any kind of test or limiting principle when determining what entities have the authority to bring suit against private parties for alleged violations of a statutory scheme. Second, given the explosion of cases by local governments against private parties (which are often pursued by counsel retained on a contingency fee basis), the potential for litigation in every sphere of business is massive.

A. The Commonwealth Court's directness test is not supported by law.

As the Defendants persuasively argue, the Commonwealth Court's "direct relationship" test has no basis in law. Indeed, in the numerous cases where this Court has held that no cause of

action exists under common law due to the delegation of enforcement authority to one specific entity, the Court has never relied on any measure of the directness of the harm or relationship at issue.

For example, in *D'Ambrosio v. Pennsylvania National Mutual Casualty Insurance Co.*, 431 A.2d 966 (Pa. 1981), this Court addressed the availability of a common law cause of action by an insured individual against an insurer for bad faith conduct in denying the insured individual's claim. *Id.* at 967. This Court determined that, based on the text of the Unfair Insurance Practices Act, the Insurance Commissioner of Pennsylvania had sole authority to enforce the Act and that "[t]here is no evidence to suggest . . . that the system of sanctions established under the Unfair Insurance Practices Act must be supplemented by a judicially created cause of action." *Id.* at 969-70. The Court thus determined that a private party could not seek emotional distress or punitive damages through a common law cause of action. *Id.* at 970.

At no point in deciding *D'Ambrosio* did this Court consider which entity—the insured individual or the Insurance Commissioner—has a "more direct relationship" with the insurance company. Similarly, the Court did not consider which entity was more directly harmed by the actions of the insurance company. Indeed, if the Court had considered such an inquiry necessary, the result of the case might have been different. It is hard to imagine the Court finding that the Insurance Commissioner or the Commonwealth had either a "more direct relationship" with the insurance company or suffered "more direct harm" when compared to the insured individual himself. Nevertheless, the closeness of the relationship and the resultant harm was never considered. Instead, the Court focused exclusively on the scope of the Act and the remedies provided within it.

Similarly, in *Lerro ex rel. Lerro v. Upper Darby Township*, 798 A.2d 817 (Pa. Cmwlth. 2002), the Commonwealth Court addressed a case by a mother and son against a township for failing to enforce the Dog and Rabies Ordinance of 1977 and the

Pennsylvania Dog Law Act. *Id.* at 818-19. In holding that the Pennsylvania Dog Law Act did not provide a private right of action, the Court first noted that the "Secretary of Agriculture has 'general enforcement' responsibility for the State Dog Law." *Id.* at 821. The Court then recognized that "[t]o the extent the Township failed to fulfill its duty under the State Dog Law, it is the responsibility of the Secretary of Agriculture to take appropriate action." *Id.* at 822. This is because "where the General Assembly commits the enforcement of a regulatory statute to a government body or official, this precludes enforcement by private individuals." *Id.* (citations omitted).

As with *D'Ambrosio*, the Court in *Lerro* never analyzed the directness of the relationship or the harm between the individuals hurt by the dog and any other party, including the township. Instead, the Court looked to the text of the relevant statute and determined that, because enforcement of the statute was delegated to a specific government entity, all other enforcement was implicitly excluded.

As is evident from these two cases, whether an entity not named in the statute is authorized to assert a cause of action is not a matter of the directness of the relationship between the two parties or how directly one party harms the other. Instead, courts look to the language of the statute in question. If the statute itself explicitly grants one agency the authority to enforce the statute, like § 5303 does in this case, that is the end of the inquiry. Therefore, the Commonwealth Court incorrectly held that the County can maintain a private cause of action against the Defendants in the face of the text's explicit grant of regulatory and enforcement authority in PEMA.

B. The Commonwealth Court's directness test is unworkable in practice.

The Commonwealth Court's decision is problematic for another reason. In holding that the County can assert common law claims to enforce the 911 Act because of the "directness" of the relationship between the County and local telephone companies, as well as the "directness" of the harm the Defendants allegedly caused the County, the Commonwealth

Court announced a test that is hopelessly vague and amorphous. Indeed, as evidenced by the Commonwealth Court's lack of explanation, the concept of how "direct" a relationship or harm must be cannot be easily defined. As a result, the parties may have to litigate the "directness" of the relationships and the harm in order to determine whether the County can still maintain a cause of action against each Defendant.

In this case, the County has sued fifteen different companies for three categories of misconduct: "(1) failure to charge or remit 911 fees at all; (2) incorrect classification of service; and (3) undercharging for service, and therefore under-collecting and under-remitting [] 911 fees." (App'x B at 2.) In ruling that the relationships between Defendants and the County were direct enough, the Commonwealth Court did not attempt to distinguish between the different companies or the classes of allegations asserted against them.

Therefore, it is unclear if the relationship between the County and the telephone companies is truly "direct enough"

in each case, or whether each Defendant can now attempt to prove that its relationship with the County is more remote than the relationships between the County and the other Defendants. Similarly, depending on which allegations are being asserted against each Defendant, each Defendant may be able to establish that the harm it allegedly caused the County was not "direct," but was somehow more indirect than the harm caused by other telephone companies.

This problem will be exacerbated based on the number of pending suits by other counties against more than eighty telephone companies throughout the state. In each of those cases, the question of "directness" may need to be explored and re-litigated, thus straining the resources of the businesses and the judicial system as a whole. Indeed, in crafting a test based on the "directness" of the relationship and the harm at issue, the Commonwealth Court has established a regime that is inherently fact-dependent, with few boundaries and guiding principles. This surely was not the intent of the General

Assembly in delegating exclusive enforcement authority to PEMA.

C. Based on the amorphous nature of a "direct relationship," litigation against businesses involved in public-private partnerships may increase exponentially.

The Commonwealth Court's decision in this case creates concerning policy implications for the entire business community. Beyond the 911 context, local governments frequently turn to private companies to provide necessary goods and services in a cost-effective, high quality, and reliable manner. Private companies, for example, manage public schools, run prisons, oversee welfare programs, provide drug-abuse counseling, and offer employment training.

A rule that would permit local governments, and perhaps even private plaintiffs, to bring suit under the common law to enforce statutory obligations could apply whenever a statute requires a private company to assist local governments in performing an important task on behalf of the public. Should such a case be brought, based on the Commonwealth Court's

decision in this case, courts would have to examine how directly each plaintiff was related to each defendant, and whether the harm the defendant allegedly caused was "direct enough" to allow an enforcement action. This analysis would be required even though the General Assembly specifically placed enforcement authority in one centralized Commonwealth agency.

The practical effect of such an approach would be to expose any company that assists local governments pursuant to a statute to costly and unanticipated litigation. This would create a serious disincentive for companies to engage in business with local governments in the first place, to the detriment of municipalities and their residents. Indeed, allowing the "directness" test of the Commonwealth Court to stand exposes would-be defendants to "extensive discovery," "the potential for uncertainty and disruption," and other litigation-related burdens that substantially raise the "costs of doing business." *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc.*, 552 U.S. 148, 163-64 (2008). Indeed, even if the

relationship and harm involved were eventually determined to be too remote, businesses will still have spent unnecessary time and resources fighting off these claims.

In many cases, these burdens will be sufficiently onerous as to "allow plaintiffs with weak claims to extort settlements from innocent [defendants]." *Id.* at 163; *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558 (2007) (referring to litigation tactics that "take up the time of a number of other people, with the right to do so representing an *in terrorem* increment of the settlement value"). When the defendant is a business, moreover, the costs of defending against such litigation will be either absorbed (and thus borne by investors and employees) or passed on to consumers. *See Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 189 (1994).

Given the many statutes that, under the Commonwealth Court's directness test, may create a private cause of action for counties and individuals, permitting this litigation to go forward has the potential to disrupt the public-private relationships that have long contributed to the well-being of the

country and its citizens. To be sure, it is well-established that private entities that do business with local governments may not act with impunity. But it is up to the political branches to decide what enforcement mechanisms to provide and who may invoke them. It is not the role of the judiciary to substitute its judgment for that of the political branches and to create a common law right of action that does not exist as a matter of statute.

Therefore, this Court should reverse the decision of the Commonwealth Court and reaffirm the previously-established principle that, where the General Assembly has delegated a specific entity with enforcement authority for a specific statute, all other potential sources of redress are excluded.

III. The Counties are Improperly Pursuing this Litigation Through Contingency Fee Representation.

This litigation also highlights another issue that is troubling to *amici* as well as the business community at large: that of counties and other public entities hiring outside counsel on a contingency fee basis to sue private companies. As is

evidenced by this case, Phone Recovery Services ("PRS") has been soliciting government entities across the country to pursue enforcement actions regarding the collection of 911 fees and taxes, and convincing these entities to hire contingency fee counsel in the process. *See, e.g.*, Roger Quigley, *Cumberland County commissioners agree to proceed with action to recover 911 fees*, PennLive.com, July 20, 2015 (explaining that, according to a pitch delivered by Dilworth Paxson and PRS to the commissioners of Cumberland County, "[c]ounties all around the country are not receiving money they're owed from the 911 surcharge tacked onto phone bills," and offering to recover those fees in exchange for a 40 percent contingency fee). This case is just one more example of the troubling contingency fee practices occurring around the United States.

Over the past few decades, contingency fee arrangements have led to "the creation of a new model for state-sponsored litigation that combines the prosecutorial power of the government with private lawyers aggressively pursuing litigation that could generate hundreds of millions in

contingent fees." Richard O. Faulk & John S. Gray, *Alchemy in the Courtroom? The Transmutation of Public Nuisance Litigation*, 2007 Mich. St. L. Rev. 941, 968 (2007). Over the past twenty years, "state governments have increasingly resorted to this practice in their efforts to pursue 'big money' claims against alleged tortfeasors." Martin H. Redish, *Private Contingent Fee Lawyers and Public Power: Constitutional and Political Implications*, 18 Sup. Ct. Econ. Rev. 77, 80 (2010).

Pennsylvania is not immune to the problems involved with public entities retaining private counsel on a contingency fee basis. This Court has already remarked on the "substantial concern" it has regarding "the use by public agencies of outside counsel, with personal financial incentives, to spearhead litigation pursued in the public interest." *Commonwealth v. TAP Pharm. Prods., Inc.*, 94 A.3d 350, 363 n.19 (Pa. 2014). Indeed, this Court specifically noted that "[a]t the very least, close supervision is required in such relationships, and, of course, the state agencies in whose name the cause is pursued bear the

ultimate responsibility for the sort of overreaching" that was present by plaintiff's counsel in that case. *Id.*

Such "concern" and "close supervision" is necessary, given the key distinctions between government attorneys and private lawyers. As the United States Supreme Court has recognized, government attorneys are "the representative[s] not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all." *Berger v. United States*, 295 U.S. 78, 88 (1935). The government attorney's duty is not necessarily to achieve the maximum recovery; rather, "the Government wins its point when justice is done in its courts." *Brady v. Maryland*, 373 U.S. 83, 87 n.2 (1963). While this principle was first announced in connection with government prosecutors, it applies "with equal force to [a] government's civil lawyers." *Freeport-McMoRan Oil & Gas Co. v. Fed. Energy Regulatory Comm'n*, 962 F.2d 45, 47 (D.C. Cir. 1992).

By contrast, attorneys who work on a contingency fee basis are motivated by financial incentives to maximize

recovery. Such lawyers have different and conflicting motivations from the typical government lawyer. Because of the goal of maximizing recovery, contingency fee arrangements make it more likely that the lawyers representing the public entity will overreach and less likely that they will recognize they have "obligations that might sometimes trump the desire to pound an opponent into submission." *Id.* at 48. There may often be cases where contingency fee counsel representing a public entity may continue litigating, even though the public interest may be "better served by [forgoing] monetary claims, or some fraction of them, in return for nonmonetary concessions." David A. Dana, *Public Interest & Private Lawyers: Toward a Normative Evaluation of Parens Patriae Litigation by Contigency Fee*, 51 DePaul L. Rev. 315, 323 (2001). Indeed, "it is hard to imagine contingency fee lawyers advocating to drop a case, as doing so would leave them without any compensation for their work." *Id.* at 326.

The mixed incentives facing private counsel retained on a contingency fee basis to represent public entities also presents

significant due process concerns. The United States Supreme Court has long recognized that "[t]he Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases." *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980). The Due Process Clause requires neutrality to "preserve[] both the appearance and reality of fairness, 'generating the feeling, so important to a popular government, that justice has been done.'" *Id.* (quoting *Joint Anti-Fascist Comm. v. McGrath*, 341 U.S. 123, 172 (1951) (Frankfurter, J., concurring)).

Contingency fee arrangements between public entities and private counsel undermine this neutrality. As one former attorney general observed, "'[t]hese contracts . . . create the potential for outrageous windfalls or even outright corruption for political supporters of the officials who negotiated the contracts.'" Adam Liptak, *A Deal for the Public: If You Win, You Lose*, N.Y. Times, July 9, 2007, at A10 (quoting Hon. William H. Pryor, Jr.).

Even when improprieties such as corruption are not present, the result still undermines confidence in the justice system. Through these contingency fee suits, private attorneys may make substantial sums while diverting resources away from the public at large, whose interest the attorneys are allegedly protecting. Were the County to prevail in this litigation, for example, the result would be Dilworth Paxson and PRS walking away with 40% of any recovery, even though the funds that were recovered were allegedly necessary in order for the County to provide 911 emergency service.

The potential for undermining confidence in the justice system is especially problematic because state and local governments do not actually need to hire counsel on a contingency fee basis. "The contingency fee arrangement has long been regarded as the means by which individuals who lack the economic resources to hire private attorneys may be granted access to the legal system and a legal advocate." Leah Godesky, *State Attorneys General and Contingency Fee*

Arrangements: An Affront to the Neutrality Doctrine?, 42 Colum. J.L. & Soc. Probs. 587, 587-88 (2009).

Unlike in the typical situation where a plaintiff hires counsel on a contingency fee basis, the public entities here do not need contingency fee arrangements in order to vindicate rights that would otherwise be economically infeasible to pursue in court. State and local governments have the resources to hire their own counsel or even to retain outside counsel on an hourly or flat-fee basis. Moreover, in cases such as this one, where multiple public entities have similar incentives, the local governments are certainly free to jointly pursue litigation and share the resultant costs. Therefore, no public policy reason exists to continue to allow the practice of local governments hiring counsel on a contingency fee basis.

As is evidenced by the growing concern around the country regarding contingency fee representation of public entities, courts must ensure that the judicial system is not undermined, either in perception or in actuality. By allowing such representation to continue, the business community has

been, and will likely continue to be, subjected to expensive litigation by overreaching contingency fee counsel. *See TAP Pharm. Prods., Inc.*, 94 A.3d at 363 n.19. Moreover, even if the public entities prevail in litigation, private attorneys are recovering massive sums in fees, to the detriment of the public whose interest they are supposed to be vindicating. Therefore, this Court should carefully consider the implications of allowing such representation arrangements to continue.

CONCLUSION

Based on the foregoing, the Chamber of Commerce of the United States of America and the Pennsylvania Chamber of Business and Industry, as *amici curiae*, respectfully ask this Court to reverse the Commonwealth Court's Order and remand the action to the Court of Common Pleas of Butler County with instructions to dismiss the County's complaint with prejudice for failure to state a claim upon which relief can be granted.

Respectfully submitted,

/s/ Robert L. Byer

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March 8, 2018

CERTIFICATE OF WORD COUNT

I certify that this brief is 4,526 words long and therefore complies with the word count limit in Pa.R.A.P. 531(b)(3).

March 8, 2018

/s/ Robert L. Byer

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