

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

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CITY OF PHILADELPHIA and  
JOHN F. STREET, individually as a taxpayer  
and in his official capacity as Mayor of Philadelphia,

Petitioners,

vs.

COMMONWEALTH OF PENNSYLVANIA, et al.,

Respondents

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**PETITIONERS' MOTION FOR PRELIMINARY INJUNCTION**

Pursuant to Rule 1531 of the Pennsylvania Rules of Civil Procedure, Petitioners hereby move the Court for a preliminary injunction in the form submitted herewith enjoining further implementation of any part of Act 2002-230 (the "Act") pending the Court's final decision on the merits. As grounds, Petitioners allege that the Act is facially invalid under Article 3 of the Pennsylvania Constitution and is already having profound and negative effects on the economic future of Southeastern Pennsylvania. The reasons in support of this motion are set forth in greater detail in Petitioners' Petition for Review in the Nature of a Complaint Seeking a Declaratory Judgment and Injunctive Relief and Memorandum in Support of Its Motion for Preliminary Injunction.

Respectfully submitted,

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Nelson A. Diaz,  
City Solicitor  
Attorney I.D. No. 15652  
William R. Thompson,  
Chair, Litigation Group  
Attorney I.D. No. 32687  
Michael F. Eichert,  
Chief Deputy City Solicitor,  
Commercial Litigation Unit  
Attorney I.D. No. 25102  
Mark R. Zecca,  
Senior Attorney  
Attorney I.D. No. 21515

City of Philadelphia Law Department  
1515 Arch Street, 17<sup>th</sup> Floor  
Philadelphia, PA 19102  
(215) 683-5003

---

Robert C. Heim  
Attorney I.D. No. 15758  
Jennifer R. Clarke  
Attorney I.D. No. 49836  
Edward T. Fisher  
Attorney I.D. No. 86652

Dechert LLP  
4000 Bell Atlantic Tower  
1717 Arch Street  
Philadelphia, PA 19103

Counsel for Petitioners City of  
Philadelphia and John F. Street,  
Mayor

Dated: January 22, 2003

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**PRELIMINARY INJUNCTION ORDER**

AND NOW, this \_\_\_\_\_ day of January, 2003, upon consideration of Petitioners' Motion for Preliminary Injunction, memorandum of law in support thereof, and Petition for Review in the Nature of a Complaint Seeking a Declaratory Judgment and Injunctive Relief, it is hereby ORDERED that: (i) all new appointments to the Convention Center Board pursuant to Act 2002-230 are stayed, and the Board is enjoined from meeting until this Court makes a final determination on the merits; and (ii) all other implementation of Act 2002-230 is stayed in its entirety, and that Respondents and each of them are enjoined during the pendency of this action or until further order of this Court from taking action in furtherance of implementation of any part of Act 2002-230.

BY THE COURT:

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**PETITIONERS' MEMORANDUM IN SUPPORT OF  
ITS MOTION FOR PRELIMINARY INJUNCTION**

**INTRODUCTION**

This is a suit for declaratory relief to declare Act 2002-230 (the "Act") unconstitutional and for injunctive relief to stay implementation of a facially unconstitutional statute that is having profound and negative effects on the economic future of Southeastern Pennsylvania.

The region is already beginning to see the enormous and negative effects of the Act. Among many other fundamental changes, some provisions of the Act tamper with the governance of the Pennsylvania Convention Center, and have already stopped progress in its tracks. Certain unions which had previously committed to proceed under an all-important

agreement to improve Convention Center service are no longer willing to do so. The ambiguities in how the governance changes are to be implemented have resulted in Board gridlock.

The shadow cast by the unconstitutionality of the Act will continue to thwart progress unless its implementation is stayed. Financial institutions may be reluctant to provide financing because the Convention Center's Board may later be found to have been convened pursuant to an unconstitutional statute. The validity of other contracts entered into by an unconstitutionally-convened Board could be suspect and therefore could deter others from entering into such contracts.

The effects of this paralysis reverberate well beyond the walls of the Convention Center. That institution is the centerpiece of the region's hospitality industry. An important study conducted by respected economists at Econsult Corporation called the Center the "crucial cornerstone of the hospitality industry." They wrote: "The main purpose of a Convention Center in Philadelphia, Pennsylvania or elsewhere, is to stimulate the regional economy by drawing visitors into the region where they will spend money on hotels, restaurants and other attractions."

The Center has stimulated the economy as hoped. According to *Center City Developments*, there are now more than 56,000 hospitality jobs in the City, accounting for 10 percent of the City's workforce. Another 80,000 people are employed in the hospitality industry in the surrounding suburbs.

According to DK Shifflet and Associates, Inc., the leading USA travel / tourism market research consulting firm, Philadelphia generates \$3 billion per year in domestic travel spending. Regionally, the figure is even more staggering at \$8.1 billion per year. The

Convention Center is the engine for this tremendous growth, accounting for more than 10 million visitors who themselves have spent \$2.6 billion since the Center opened. In 2002, Convention delegates booked more than 500,000 rooms nights and spent \$240 million.

Act 2002-230 has and will continue to cause immediate and irreparable harm to other aspects of the City's financial stability. Although the subject is nowhere listed in the title of the Act, and was added at the very last moment, the Act purports to affect substantive and procedural protections in contract negotiations with the City's uniformed services; protections originally added to secure the City's sound economic future in the Pennsylvania Intergovernmental Cooperation Authority Act For Cities of The First Class ("PICA"). An arbitration panel is set to begin deliberating under PICA on January 22, 2003, for a new arbitration award governing the terms and conditions of employment for Philadelphia Fire Fighters; therefore, the City and the Fire Fighters are faced with a contract of uncertain validity and with potentially long-term negative consequences on the City's financial stability.

Petitioners have filed this lawsuit to have Act 2002-230 declared unconstitutional, a bill which was first presented to the legislature on November 26 and 27, 2002 (the eve of Thanksgiving and the end of the session) as a 127-page amendment to a 12-page, minor technical bill. The Act is, on its face, invalid because it violates Article 3 of the Pennsylvania Constitution. The 127-page bill, which was enacted unchanged, contained thousands of words, covering scores of subjects and making fundamental changes to institutions operating within the City of Philadelphia and beyond. The title of the bill, itself covering 27 lines of densely-worded text, still was not enough to describe the many changes that followed. Faced with a take-it-or-leave-it situation on the eve of the Thanksgiving holiday, the legislators in both Houses passed the bill on the same day it was given to them, becoming Act 2002-230.

In this motion, Petitioners are seeking preliminary injunctive relief. The chaos at the Convention Center caused by the Act itself and the further cloud of invalidity will, unless the named Respondents are precluded from appointing members of the Board under the Act and further meeting of the Board stayed, have catastrophic consequences on the region's economy which is so dependent upon the hospitality industry.

Moreover, immediate injunctive relief is necessary because, unless further implementation of Act 2002-230 is immediately stayed, and Respondents are immediately enjoined from taking actions in accordance with Act 2002-230, the many other disparate affected individuals and entities will have already taken the required actions, causing grave harm to the welfare of the citizens of the City of Philadelphia and the Commonwealth. Undoing such actions will be profoundly disruptive to the operations of the City of Philadelphia and throughout the Commonwealth, particularly given the many areas in which Act 2002-230 purports to legislate.

### **FACTUAL BACKGROUND**

Originally introduced in the Senate as Senate Bill 1100 ("SB 1100") on October 9, 2001, Act 2002-230 was not signed into law by Governor Schweiker until December 30, 2002. In that period of a little over one year, the bill was revised on five separate occasions, passing between the Senate and the House of Representatives and in and out of several committees.

The first four versions of SB 1100 contained fewer than 13 pages, and only dealt with a few technical changes to Title 53 of the Pennsylvania Consolidated Statutes (i.e., Municipalities Generally). These first four versions dealt with topics such as the residence of board membership of borough business improvement district authorities, the filing of audits by

municipal authorities, and standing to file an appeal in cases related to outdoor advertising (the fourth version of the bill also added a new § 1391 to Title 53 Pa.C.S., which would give the governing body of municipalities control of all gifts made in trust to the municipality).

On November, 26, 2002, the Senate Rules and Executive Nominations Committee reported the bill on concurrence (i.e., the Senate could not amend the bill) with massive new amendments, extending the length of the bill from 12 pages to 127 pages. This fifth and final version of the bill covered multiple new subjects never subjected to consideration in either House, affecting not only Title 53 of the Pennsylvania Consolidated Statutes, but also amending uncodified acts found in Title 8 and Title 53 of the uncodified Pennsylvania Statutes. In addition to retaining the earlier provisions, the fifth version of the bill added new provisions that:

- (a) Prohibited political activity by police officers;
- (b) Made significant changes to the laws relating to Parking Authorities;
- (c) Gave major new powers to the Philadelphia Parking Authority (“PPA”) (including, among others, transferring authority to regulate taxicabs and limousines from the Public Utility Commission to the PPA; removing the oversight authority that the Philadelphia Finance Director had over the PPA; creating a new taxicab regulatory fund in the PPA, and appropriating funds thereto; and regulating bonds issued by the PPA);
- (d) Created a new Chapter of Title 53 Pa.C.S., with 45 sections, making extensive provisions for regulation of taxis and limousines in Philadelphia;
- (e) Created a new Chapter of Title 53 Pa.C.S., with ten new sections, making extensive provisions for the regulation of contractors’ bonds and financial security for redevelopment contracts throughout Pennsylvania, making major substantive changes in the law in this area;
- (f) Created a new Chapter of Title 53 Pa.C.S, with 23 sections, providing for a new Pennsylvania Convention Center Authority, making major changes in governance provisions, providing for new appointments of Board members by the County Commissioners of Bucks, Montgomery, Chester and Delaware Counties, among many other major changes in the legal provisions governing the authority; and

- (g) Made a major change in the law by repealing Subsection 209(k) of the Act of June 5, 1991, P.L. 9, No. 6, PICA, which requires determinations of an Act 111 interest arbitration panel, establishing terms and conditions of employment for uniformed police and fire fighters, to accord substantial weight to the approved financial plan and the financial ability of the assisted city to pay the cost of an increase in wages or fringe benefits without adversely affecting levels of service, and creates a right of appeal for the City in the event that any award fails to comply with these standards.

Although the title of this bill was 27 lines long, it still failed to address all of the subjects that it covered.

On November 26, 2002, the same day it was reported from the Senate Rules and Executive Nominations Committee, the Senate passed the bill in the same form as reported by that Committee. The next day, November 27, 2002, the day before Thanksgiving, the House referred the bill to the House Rules Committee, which then reported it on concurrence (i.e., the House could not amend the bill); the House then approved the bill as reported without change that same day.

As a result of the stealth and speed with which the bill was passed, Petitioners, the public and even members of the legislature did not have notice of the bill that was being considered. As one Member, the Honorable Steve Samuelson of Lehigh and Northhampton Counties, complained: “We are dealing with a 127-page bill that came over from the Senate just yesterday and each member is facing the challenge of digesting every possible provision that is in this 127-page piece of legislation...”

### **ARGUMENT**

Injunctive relief is appropriate where petitioners’ right to relief is clear, the need for relief is immediate, and the injury will be irreparable if the injunction is not granted. Zebra v.

Pittsburgh Area School District, 296 A.2d 748, 750 (Pa. 1972). These factors compel the conclusion that Petitioners are entitled to a preliminary injunction in this case.

## **I. PETITIONERS' RIGHT TO RELIEF IS CLEAR**

It is the duty of the courts of this Commonwealth to invalidate legislative action that is repugnant to the Constitution. Pennsylvania AFL-CIO by George v. Commonwealth, 691 A.2d 1023, 1035 (Pa. Cmwlth. 1997) (citing Zemprelli v. Daniels, 436 A.2d 1165, 1169 (Pa. 1981)). The Supreme Court of Pennsylvania has stated that "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, we are mandated to do no less." Consumer Party of Pennsylvania v. Commonwealth, 507 A.2d 323, 334 (Pa. 1986).

The procedure through which Act 2002-230 was enacted violated Article 3, Sections 1, 3, 4 and 6 of the Pennsylvania Constitution which provide:

Section 1. "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."

Section 3. "No bill shall be passed containing more than one subject, which shall be clearly expressed in the title..."

Section 4. "Every bill shall be considered on three different days in each House. All amendments made thereto shall be printed for the use of the members before the final vote is taken on the bill..."

Section 6. "No law shall be revived, amended, or the provisions thereof extended or conferred, by reference to its title only, but so much thereof as is revived, amended, extended or conferred shall be re-enacted and published at length."

P.S. Const. art. 3, §§ 1, 3, 4 and 6.

As this Court and the Supreme Court have interpreted these provisions, they are collectively intended to ensure that members of the Assembly and others interested are put on notice, by the title of the measure submitted, so that they might vote on it with circumspection. Scudder v. Smith, 200 A. 601, 604 (Pa. 1938); Fumo v. Pennsylvania Public Utility Commission, 719 A.2d 10, 13 (Pa. Cmwlth.,1998). These provisions prohibit legislation containing subjects entirely disconnected with each other in such a way as to mislead or deceive readers. Richards v. Unemployment Compensation Bd. of Review, 731 A.2d 214, 219 (Pa. Cmwlth. 1999), reargument denied, appeal granted 745 A.2d 614 (Pa. 2000), reversed [on other grounds] 768 A.2d 852 (Pa. 2001). The purpose of Article 3, Section 6, is to provide, in conjunction with other provisions in Article 3, full notice and publicity to all proposed legislative enactments, and thus to prevent the passage of “sneak” legislation. L. J. W. Realty Corp. v. City of Philadelphia, 134 A.2d 878, 882 (Pa. 1957). Taken together these Sections forbid blind amendments to a bill (i.e., express amendments which did not place the proposed act before the legislators in a form that would enable them without reference to a prior act to clearly understand the change proposed to be made). City of Wilkes-Barre v. Pennsylvania Public Utility Commission, 63 A.2d 452, 455 (Pa. Super. 1949).

The procedures employed in enacting Act 2002-230 violated each of these mandatory Constitutional protections. When Act 2002-230 was first introduced and through most of its legislative history, it contained only one subject and the title identified the topics it covered. However, as set forth fully in the Petition for Review in the Nature of a Complaint Seeking a Declaratory Judgment and Injunctive Relief, the subjects expanded exponentially. The final version of Act 2002-230 contained multiple disparate subjects having no relation to each other. The elements of the bill had no common scheme or purpose and no relationship to each

other. Although the number of subjects increased dramatically, the title of the bill failed to keep pace. Among other omissions, the title of the bill failed to refer in any manner to the major substantive change in the law brought about by repealing a portion of PICA which had been critical to Philadelphia's financial recovery. The bill which was finally introduced and passed was so different from the bill which had been previously considered and approved by the House and Senate on three previous occasions that the House and Senate cannot be said to have considered the final bill on the required three occasions. And, based on the face of the bill, it was impossible to determine the effects of the repeals and the amendments because the bill did not, as required, publish all of their texts.

Based on the clear, mandatory terms of the Pennsylvania Constitution, the right to relief under these circumstances is clear.

## **II. THE NEED FOR RELIEF IS IMMEDIATE**

Immediate injunctive relief is appropriate in this case because the chaos at the Convention Center caused by the Act itself and the further cloud of invalidity will, unless the named Respondents are precluded from appointing Board members under the Act and further meeting of the Board stayed, have catastrophic consequences on the region's economy which is so dependent upon the hospitality industry.

Immediate relief is necessary because, unless further implementation of the Act is stayed and Respondents are immediately enjoined from taking actions in accordance with Act 2002-203, the many other disparate affected individuals and entities will have already taken the required actions, causing grave harm to the welfare of the citizens of the City of Philadelphia and the Commonwealth. Undoing such actions will be profoundly disruptive, particularly given the

many areas in which Act 2002-203 purports to legislate. For example, the Pennsylvania Public Utility Commission is charged with transferring taxi and limousine regulation to the Philadelphia Parking Authority pursuant to this Act, and the Parking Authority is charged with implementing numerous provisions of this new Act.

Moreover, if the General Assembly is permitted to proceed without constraints, especially in the face of such egregious violations of Article 3 of the Pennsylvania Constitution as exist in the present case, the legislative process will cease to be open and deliberative and instead will be carried on in secret, immune from the input of those, such as the City of Philadelphia in this case, who are most directly affected.

### **III. THE INJURY WILL BE IRREPARABLE IF AN INJUNCTION IS NOT GRANTED**

Finally, Petitioners will suffer irreparable harm if a preliminary injunction is not granted to prevent the relevant individuals and entities from taking their respective actions to implement Act 2002-230. The provisions of Act 2002-230 cause harm to Petitioners in that the all-important revenue and jobs generated by Philadelphia's hospitality industry are at risk. The Act changes existing laws in ways that disparately affect Philadelphia to a greater extent than any other municipality. These changes directly reduce the City of Philadelphia's control over such important areas as the Pennsylvania Convention Center, the Philadelphia Parking Authority, and the City's right to appeal an arbitration award that grants excessive pay and/or benefit increases to the Philadelphia Fire Fighters. Considered individually, each of the provisions discussed above presents a risk of harm to Petitioners. Collectively, the impact is catastrophic.

Moreover, the important protections of Article 3 of the Constitution -- to ensure the open and deliberative nature of the legislative process -- will be lost if the legislature is permitted to continue its open disregard of those provisions. Petitioners and each other person who is affected by legislation of the Commonwealth already lost this Constitutional opportunity when the bill was first enacted. If they do not obtain the relief sought, that opportunity will be lost forever.

### **CONCLUSION**

For all the foregoing reasons, Petitioners respectfully request that the Court grant Petitioners' Motion for Preliminary Injunction.

Respectfully submitted,

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Nelson A. Diaz,  
City Solicitor  
Attorney I.D. No. 15652  
William R. Thompson,  
Chair, Litigation Group  
Attorney I.D. No. 32687  
Michael F. Eichert,  
Chief Deputy City Solicitor,  
Commercial Litigation Unit  
Attorney I.D. No. 25102  
Mark R. Zecca,  
Senior Attorney  
Attorney I.D. No. 21515

City of Philadelphia Law Department  
1515 Arch Street, 17<sup>th</sup> Floor  
Philadelphia, PA 19102  
(215) 683-5003

---

Robert C. Heim  
Attorney I.D. No. 15758  
Jennifer R. Clarke  
Attorney I.D. No. 49836  
Edward T. Fisher  
Attorney I.D. No. 86652

Dechert LLP  
4000 Bell Atlantic Tower  
1717 Arch Street  
Philadelphia, PA 19103  
(215) 994-4000

Counsel for Petitioners City of  
Philadelphia and John F. Street,  
Mayor

Dated: January 22, 2003

CERTIFICATE OF SERVICE

I, Edward T. Fisher, hereby certify that on the 23<sup>rd</sup> day of January 2003, a true and correct copy of the foregoing MOTION FOR PRELIMINARY INJUNCTION, FORM OF PRELIMINARY INJUNCTION ORDER, AND SUPPORTING MEMORANDUM was hand-delivered to:

Hon. D. Michael Fisher  
Attorney General of Pennsylvania  
Executive Offices  
Strawberry Square  
Harrisburg, PA 17120  
(717) 787-3391

Edward G. Rendell  
Office of the Governor  
Room 225  
Main Capital Building  
Harrisburg, PA 17120  
(717) 787-2500

Robert C. Jubelirer  
Senate District 30  
292 Capital Building  
Senate Box 203030  
Harrisburg, PA 17120-3030  
(717) 787-5490

Hon. Matthew J. Ryan  
District 168  
139 Main Capital Building  
House Box 202020  
Harrisburg, PA 17120-2020  
(717) 787-4610

David J. Brightbill  
Senate Majority Leader  
350 Main Capital Building  
Harrisburg, PA 17120  
(717) 787-5708

Hon. H. William DeWeese  
Minority Leader of House of Representatives  
Room 423 Main Capitol Building  
Harrisburg, PA 17120-2020  
(717) 783-3797

Robert Williams  
CEO and President  
Pennsylvania Convention Center  
Authority  
1101 Arch Street  
Philadelphia, PA 19107  
(215) 418-4700

Toi Shields, Esquire  
Vice President, Legal  
Pennsylvania Convention Center  
Authority  
1101 Arch Street  
Philadelphia, PA 19107  
(215) 418-4700

---

Edward T. Fisher  
Attorney I.D. No. 86652  
Dechert LLP  
4000 Bell Atlantic Tower  
1717 Arch Street  
Philadelphia, PA 19103  
(215) 994-2996