

IN THE SUPREME COURT OF PENNSYLVANIA

Docket No. _____

THE HONORABLE JOHN W. HERRON

v.

COMMONWEALTH OF PENNSYLVANIA,
EDWARD G. RENDELL, GOVERNOR OF THE
COMMONWEALTH OF PENNSYLVANIA,
CATHERINE BAKER KNOLL, PRESIDENT OF THE SENATE OF THE
COMMONWEALTH OF PENNSYLVANIA,
ROBERT C. JUBELIRER, PRESIDENT PRO TEMPORE OF THE SENATE OF THE
COMMONWEALTH OF PENNSYLVANIA,
JOHN M. PERZEL, SPEAKER OF THE HOUSE OF REPRESENTATIVES OF THE
COMMONWEALTH OF PENNSYLVANIA,
TOM CORBETT, ATTORNEY GENERAL OF THE
COMMONWEALTH OF PENNSYLVANIA,
ROBERT P. CASEY, JR., STATE TREASURER OF THE
COMMONWEALTH OF PENNSYLVANIA

APPLICATION FOR EXTRAORDINARY RELIEF

Application For Immediate Supreme Court Review Pursuant To 42 Pa.C.S. § 726 and
Pa. R.A.P. 3309 of Herron v. Commonwealth of Pennsylvania, et al.,
pending in the Commonwealth Court of Pennsylvania, No. 605 M.D. 2005.

Robert C. Heim, Esquire (Id. No. 15758)
Nory Miller, Esquire (Id. No. 90735)
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DEC 16 2005
SUPREME COURT
EASTERN DISTRICT

Attorneys for Applicant
The Honorable John W. Herron

APPLICATION FOR EXTRAORDINARY RELIEF

Applicant, The Honorable John W. Herron, by and through his undersigned counsel, files this application pursuant to Pa.R.A.P. 3309 and asks this Court to exercise its extraordinary jurisdiction, 42 Pa.C.S. § 726, and hear the matter now pending before the Commonwealth Court at No. 605 M.D. 2005.

INTRODUCTION

1. This action involves a matter of great and immediate public importance to the Commonwealth of Pennsylvania. The case presents a conflict between the executive and legislative branches of the Commonwealth's government, on one side, and the judicial branch, on the other, over the constitutionality of a new law reducing the compensation of members of the Commonwealth's judiciary.

2. The case over which Applicant is asking the Court to exercise its extraordinary jurisdiction, which was filed this same date in the Commonwealth Court, is an action challenging the constitutionality the act of November 16, 2005, P.L. 385, ("Act 72"), insofar as it affects the compensation of justices, judges, and justices of the peace of the Commonwealth of Pennsylvania. A copy of the Petition For Review filed in the Commonwealth Court is attached hereto as Exhibit A.

3. Act 72, by repealing the act of July 7, 2005, P.L. 201, No. 44, ("Act 44") and reenacting and amending the act of September 30, 1983, P.L. 160, No. 39, ("Act 39 of 1983"), diminished the compensation of state justices, judges and justices of the peace ("judges") during their terms of office in violation of Article V, section 16 of the Constitution of the Commonwealth of Pennsylvania.

4. A definitive ruling by this Court will resolve a constitutional issue of great importance to all judges of the Commonwealth of Pennsylvania, conserve judicial resources by determining the purely constitutional question at issue in this case and foreclosing a multiplicity of litigation, and avoid the expenses associated with litigation in the lower courts of the Commonwealth under circumstances that do not involve development or presentation of any factual matters.

PARTIES

5. Applicant, The Honorable John W. Herron, is a Judge of Philadelphia County Court of Common Pleas. Judge Herron's office is located at 300 City Hall, Philadelphia, Pennsylvania. Judge Herron was first elected to the Philadelphia Court of Common Pleas in 1987 and was re-elected in 1997 for a ten-year term.

6. Respondent Commonwealth of Pennsylvania is the government of Pennsylvania.

7. Respondent Edward G. Rendell is the Governor of the Commonwealth of Pennsylvania. As such, he is responsible for the governance of this State, including the enforcement of its laws. Respondent Rendell is sued in his official capacity.

8. Catherine Baker Knoll, as Lieutenant Governor, is President of the Senate of the Commonwealth of Pennsylvania. As such, she presides over the Senate and, *inter alia*, signs bills passed by the Senate. Defendant Knoll is sued in her official capacity.

9. Respondent Robert C. Jubelirer is President Pro Tempore of the Senate of the Commonwealth of Pennsylvania. As such, he signs bills passed by the Senate. Defendant Jubelirer is sued in his official capacity.

10. Respondent John M. Perzel is the Speaker of the House of Representatives of the Commonwealth of Pennsylvania. As such, he presides over the House of Representatives and, *inter alia*, signs all bills passed by the House. Respondent Perzel is sued in his official capacity.

11. Respondent Tom Corbett is the Attorney General of the Commonwealth of Pennsylvania. As such, he is the chief law enforcement officer of the Commonwealth. Respondent Corbett is sued in his official capacity.

12. Respondent Robert P. Casey, Jr. is the State Treasurer of the Commonwealth of Pennsylvania. As such, he is responsible for all receipt and disbursement of funds by the Commonwealth, including payment of the salaries of judges. Respondent Casey is sued in his official capacity.

FACTS

13. On July 7, 2005 Defendant General Assembly passed, Defendants Knoll and Perzel signed, and Defendant Governor Rendell signed into law Act 44, which amended Titles 42 (Judiciary and Judicial Procedure), 46 (Legislature) and 71 (State Government) of the Pennsylvania Consolidated Statutes, providing for the compensation of specified legislative, executive and judicial officials of the Commonwealth of Pennsylvania.

14. Until Act 44 was enacted, the compensation of judges of the Commonwealth of Pennsylvania was governed by Act 39 of 1983, as amended by Act 51 of 1995. No legislation increasing or otherwise affecting the compensation of judges was enacted between 1995 and 2005.

15. Act 44 increased the compensation of judges of the Commonwealth of Pennsylvania.

16. The salary increases for judges of the Commonwealth of Pennsylvania mandated by Act 44 were made effective immediately. Act 44, § 7.

17. Act 44 also mandated increased salaries for members of the General Assembly and certain officers of the Executive Branch of the Commonwealth of Pennsylvania.

18. Act 44 provided that the salary increases for members of the General Assembly were to apply to members of the General Assembly elected after the effective date of the Act. Act 44, § 4 (1). However, members of the General Assembly were permitted to take immediately, as unvouchered expenses, a proportion of the legislated increases that were not yet in effect. Act 44, § 4(2).

19. Act 44 provided that the salary increases for the specified officers of the Executive Branch were to apply to individuals who were appointed after December 31, 2006 or elected after the effective date of the Act. Act 44, § 4(3)-(4).

20. As a result of Act 44, Judge Herron's compensation increased as of July 7, 2005.

21. On November 16, 2005, Defendant General Assembly passed, Defendants Knoll and Perzel signed, and Defendant Governor Rendell signed into law Act 72, which repealed Act 44 and reenacted and amended Act 39 of 1983.

22. In effect, Act 72 withdrew the salary increases mandated by Act 44, and already in effect for judges, and reinstated the salaries mandated by Act 39 of 1983, as amended in 1993 and 1995.

23. Act 72 was made effective immediately and diminished the salaries paid to judges to the salaries effective as of July 6, 2005, the day before Act 44 became law.

24. As a result of Act 72, Judge Herron's compensation has been diminished, as has the compensation to all judges of the Commonwealth of Pennsylvania.

ISSUES TO BE REVIEWED

25. The issue in the case is whether Act 72 violates Article V, section 16 of the Constitution of the Commonwealth of Pennsylvania

26. Article V, section 16 of the Constitution of the Commonwealth of Pennsylvania provides that: "The[] compensation [of judges] shall not be diminished during their terms of office, unless by law applying generally to all salaried officers of the Commonwealth."

27. Act 72, and enforcement of Act 72, violate Article V, section 16 of the Pennsylvania Constitution insofar as it applies to and affects salaries owed and paid to judges of the Commonwealth of Pennsylvania.

28. Act 72 effected a significant diminishment of the compensation paid to the justices, judges, and justices of the peace of the Commonwealth of Pennsylvania during their terms of office.

29. Act 72 is not a "law applying generally to all salaried officers of the Commonwealth."

30. Act 72 provides for compensation rates only with respect to those salaried officers that Act 44 provided compensation rates for, and Act 44 provided for compensation rates only with respect to those salaried officers that Act 39 of 1983 provided compensation rates for.

31. Act 39 of 1983 provides, in its title, that the Act establishes salaries and compensation “of *certain* public officials, including justices and judges of Statewide courts, . . . , the Governor, the Lieutenant Governor, the State Treasurer, the Auditor General, the Attorney General and *certain other* State officers and the salary and certain expenses of the members of the General Assembly” Act 39 (emphasis added).

32. Act 39 does not, therefore, purport to establish salaries for all State officers.

33. Act 44 of July 2005 did not specify, in its title or otherwise, that it purported to establish salaries for all State officers.

34. Act 72, in its title, purports to reenact Act 39 of 1983, as amended, describing it as “An Act establishing salaries and compensation of *certain* public officials” including judges, members of the General Assembly, the Governor, Lieutenant Governor, Treasurer, Auditor General, Attorney General “and *certain other state officers.*” Act 72 (title) (emphasis added).

35. However, apparently aware of the constitutional difficulties it had embarked on creating, the General Assembly announced as a “Declaration of Policy” that the legislation was “not intended to diminish or infringe on, or otherwise interfere with, the independence of the judicial system” and declared that “the officials referred to in this Act shall constitute the “salaried officers of the Commonwealth” for purposes of Section 16(a) of Article V of the Constitution of Pennsylvania.” Act 72, § 1(B), (C).

36. The General Assembly’s statement that the legislation was not intended to diminish the independence of the judicial system does not change the fact that the legislation

diminished the *compensation* paid to judges, in violation of an express provision of the Pennsylvania Constitution.

37. The General Assembly's statement that the officials referred to in the legislation constituted all the salaried officers of the Commonwealth for purposes of the Pennsylvania Constitution is inconsistent with the General Assembly's own position in 1983 and with long-prevailing understandings by courts, the General Assembly and the Executive Branch in Pennsylvania.

38. The officials whose compensation was addressed in Act 72 do not constitute "all of the salaried officers of the Commonwealth." By way of example, none of the following salaried officers of the Commonwealth experienced a diminution in compensation as a consequence of Act 72:

- a. Secretary of the Senate/ Parliamentarian;
- b. Chief Clerk of the Senate;
- c. Parliamentarian of the House of Representatives;
- d. Chief Clerk of the House of Representatives;
- e. Comptroller of the House of Representatives;
- f. General Counsel;
- g. Secretary of the Budget;
- h. Director of Health Care Reform;
- i. Secretary of Legislative Affairs;
- j. Secretary of Planning & Policy
- k. State Fire Commissioner;

- l. Deputy Secretary for Community Affairs and Development;
- m. Pennsylvania Emergency Management Agency Director;
- n. Inspector General;
- o. Commissioner of the Bureau of Professional and Occupational Affairs;
- p. Executive Director of the Pennsylvania Fish and Boat Commission;
- q. Commissioners of the Pennsylvania Fish and Boat Commission;
- r. Commissioners, Pennsylvania Public Utility Commission;
- s. Members, Unemployment Compensation Board of Review;
- t. Commissioners, State Civil Service Commission;
- u. Commissioners, Pennsylvania Securities Commission;
- v. Court Administrator;
- w. Physician General;
- x. Consumer Advocate.

39. Moreover, Act 72 did not diminish the compensation paid to even the state officers whose compensation it did address.

40. Act 44 increased the compensation of certain officers of the Executive Branch who were appointed or elected in the *future*. Act 72 withdrew the compensation that would be due to such salaried officers *before* they were elected or appointed.

41. Thus, Act 72 did not diminish the compensation of the current Governor, Lieutenant Governor, or any other named elected or appointed Executive Branch officials.

42. Act 72 diminished only the established salary compensation of the judges of the Commonwealth of Pennsylvania. Act 72 also withdrew the unvouchered expense provision through which members of the General Assembly could obtain proportional amounts of their not-yet-in-effect salary increases.

43. In addition, even if Act 72 by its terms had diminished the compensation paid to all salaried officials of the Commonwealth, it is not a *general* law within the meaning of Article V, Section 16.

44. The decrease in compensation effectuated by Act 72 does not apply “generally” even to the subset of state officer positions which were addressed in the Act because the salaries of each different type of state officer was diminished to a different degree.

45. Accordingly, Act 72 does not comport with the prohibition imposed by Article V, section 16.

46. Pursuant to the Constitution of the Commonwealth of Pennsylvania, Act 72 is unconstitutional, was unconstitutional when enacted, and cannot be constitutionally enforced. Judge Herron is therefore entitled to the compensation established pursuant to Act 44.

REASONS FOR THE EXERCISE OF KING’S BENCH POWER

47. The purpose of a constitutional protection against diminishment of judicial compensation is insuring the independence of the judiciary. In order to for there to be a true separation of powers, the judiciary must be protected against intrusion by the executive and legislative branches of government.

48. For this reason, the Constitution of the United States of America prohibits the diminishment of judicial compensation during a judge’s term of office. Specifically, Article

III, Section 1 provides that, “[t]he Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.”

49. In recognition of the significance of a government based on a separation of powers, the compensation of members of the judiciary was protected from diminishment by the 1790 Constitution of the Commonwealth of Pennsylvania.

50. The protections afforded to judicial compensation by the Constitution of the Commonwealth of Pennsylvania have varied since first introduced in 1790.

51. Although the provision was not included in a subsequent Pennsylvania Constitution, the delegates to the 1968 Pennsylvania Constitutional Convention deemed it important to reintroduce the protection as an express constitutional guarantee and included Article V, section 16 in the current Pennsylvania Constitution.

52. Article V, section 16 prohibits diminishment of the compensation of judges during their term of office except under certain limited circumstances not present here.

53. The Reference Manual provided to delegates by the Preparatory Committee for the 1968 Constitutional Convention reveals the reason why the delegates adopted the only exception to Article V, section 16 – allowing judicial salaries to be reduced by “law applying generally to all salaried officers of the Commonwealth.” This exception was added in anticipation of a period of economic stress in which all state officers would take an across-the-board pay cut.

54. Respondents, in enacting Act 72, have violated this important constitutional protection afforded to Judge Herron and all members of the Pennsylvania

judiciary.

55. This is a matter of immediate public concern because it involves a serious conflict among the three branches of the government of the Commonwealth of Pennsylvania with important ramifications for the doctrine of separation of powers.

56. Final disposition of this matter is needed immediately because Act 72 is currently in effect and imposing an immediate unconstitutional deprivation on Judge Herron, along with all other judges of the Commonwealth of Pennsylvania.

57. Final disposition of this matter by this Court would promote judicial efficiency. There are no factual issues in this case to be resolved by a lower court. This case involves purely legal issues. This Court could conserve judicial resources by deciding the legal and constitutional issues now instead of requiring a determination by the Commonwealth Court and a subsequent appeal.

RELIEF SOUGHT

WHEREFORE, Applicant respectfully requests that this Court:

- a. Assume extraordinary jurisdiction of Case No. 605 M.D. 2005 currently pending before the Commonwealth Court;
- b. Declare that Act 72 violates Article V, section 16 of the Pennsylvania Constitution insofar as it affects the compensation of justices, judges, and justices of the peace of the Commonwealth of Pennsylvania;
- c. Enjoin Respondents from enforcing Act 72; and
- d. Award such other relief as this Honorable Court shall deem necessary, just and proper under the circumstances.

Dated December 6, 2005

Respectfully submitted,


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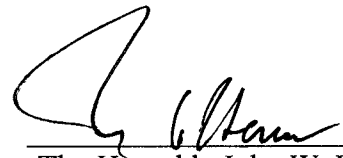
(215) 994-4000

Attorney for Applicant

The Honorable John W. Herron

Verification

I, John W. Herron, hereby verify that the statements contained in the foregoing Application For Extraordinary Relief are true and correct to the best of my knowledge and information. I further verify that the statements herein are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsifications to authorities.



The Honorable John W. Herron

Dated: December 6, 2005

CERTIFICATE OF SERVICE

I, Kristin M. Hynd, do hereby certify that I have this date caused a copy of the foregoing Application For Extraordinary Relief to be served by hand delivery upon the following:

Tom Corbett (215-560-2402)
Attorney General of the Commonwealth of Pennsylvania
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21 South 12th Street, 3rd Floor
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Edward G. Rendell (717-787-2500)
Governor of the Commonwealth of Pennsylvania
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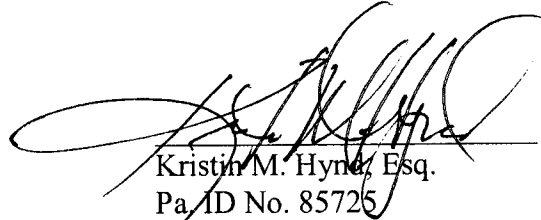
Catherine Baker Knoll (717-787-3300)
Lieutenant Governor and President of the Senate
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200 Main Capitol Building
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Robert C. Jubelirer (717-787-5490)
President Pro Tempore of the Senate
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John M. Perzel (717-787-2016)
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139 Main Capitol Building
Harrisburg, Pennsylvania 17120

Robert P. Casey, Jr. (717-787-2465)
State Treasurer of the Commonwealth of Pennsylvania
129 Finance Building
Harrisburg, Pennsylvania 17120

Dated: December 6, 2005

A handwritten signature in black ink, appearing to read 'Kristin M. Hynes', is written over a horizontal line.

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