

CONSTITUTIONAL LAW-PENNSYLVANIA CONSTITUTION-SECTION 12, ARTICLE I- POWER TO SUSPEND LAWS- *Wolf v. Scarnati*, 2020 Pa. LEXIS 3603 (July 1, 2020) Wecht, J. March 6, 2020, in response to COVID-19 pandemic, Governor Tom Wolf issued a proclamation of disaster emergency pursuant to 35 Pa. C.S. § 7301(c) a provision of the Emergency Management Services Code. The Governor's proclamation activated many emergency resources. On June 3, 2020, the Governor renewed the Disaster Emergency Proclamation for an additional 90 days. The Pennsylvania House of Representatives adopted a concurrent resolution ordering the Governor to terminate the disaster emergency. The Governor was ordered to issue an executive order or proclamation ending the state of disaster emergency. The dispute concerns whether the concurrent resolution is subject to the presentment requirement embodied in the Pennsylvania Constitution. This text has remained unchanged since 1790. The first exception to the presentment is obvious from the plain text of Article III. Section 9 states that any concurrent resolution "on the question of adjournment" need not be presented to the Governor. No party avers that H.R. 836, the joint resolution, involves adjournment. The second exception to the presentment is a concurring resolution proposing a constitutional amendment. This is set forth in Article XI, Section 1. The third exception to the presentment is not explicitly delineated. However, this applies to matters governed by constitutional provisions concerning the legislative power. Although no provision of the Constitution explicitly withdraws non-legislative resolutions from the requirement of presentment, such resolutions involve only internal affairs of the legislature. No branch of government may exercise the functions exclusively committed to another branch.

A concurrent resolution seeking to force the Governor to end a state of disaster emergency has legal effect and does not fit into any of the three recognized exceptions to presentment. Article I, Section 12 does not give the legislature the power to act unilaterally. The history of that section indicates that the clause was intended as a negative check on the executive power, rather than an affirmative grant of power to the legislature to act unilaterally. Article I, Section 12 traces its roots to the 1689 English Bill of Rights. The legislative history makes clear that the provision is a negative check on executive power rather than an affirmative grant for the legislature to act without the Governor. The General Assembly cannot use unconstitutional means to overturn a Governor's decision to suspend laws after delegating that power to the Governor. This is precisely what I told the reporter for the *Williamsport Sun-Gazette* when interviewed, which interview was reported in their June 13-14, 2020 edition. Justices Baer, Todd and Donohue joined the opinion. Justice Dougherty filed a concurring and dissenting opinion. Chief Justice Saylor filed a dissenting opinion in which Justice Mundy joined.