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## **NCLA Bemoans Pennsylvania Supreme Court’s Approval of Governor Wolf’s Rule by Executive Decree**

*Tom Wolf v. Joseph B. Scarnati, et al.*

**Washington, DC (July 1, 2020)** – The Supreme Court of Pennsylvania issued its [decision](#) today in *Tom Wolf v. Joseph B. Scarnati, et al.* in support of Governor Wolf. The court never even allowed oral argument in this very significant matter of state constitutional interpretation. NCLA’s *amicus* [brief](#) tried to bring to light a series of constitutional problems with Governor Wolf’s interpretation of Section 7301(c) of the Emergency Management Services Code used to issue a state of disaster emergency due to COVID-19 on March 6, 2020 and renewed on June 3. The general assembly passed a concurrent resolution on June 9 that should have terminated the state of disaster emergency, but Governor Wolf refused to honor it, claiming that the termination resolution must be “presented” to him for his signature or veto under Article III, § 9 of the Pennsylvania Constitution.

NCLA’s brief argues that the Governor’s argument is flawed. “The concurrence of both houses” is not “necessary” for a termination of disaster emergency under § 7301(c) of the Emergency Management Services Code, which authorizes the Governor to declare or proclaim a disaster emergency and also undeniably allows the state of disaster emergency to be terminated by the general assembly—by concurrent resolution.

The Governor simultaneously insists that he may exercise the same powers to end the state of disaster emergency without any need to comply with bicameralism and presentment himself. Such asymmetry of power allows the Governor to establish and perpetuate a state of disaster emergency that gives him an unconstitutional and dangerous power to suspend the laws by mere say-so—and without any legislative involvement whatsoever. Under the Supreme Court’s holding today, the Governor can allow his own emergency powers to continue as long as he sees fit, or until two-thirds of both legislative chambers are willing to override his veto.

Welcome to a dangerous and unconstitutional regime of executive power not seen in the Commonwealth of Pennsylvania in nearly 250 years. NCLA’s brief, which the Court denied as moot, urged the Court to deny the Governor’s request for relief and order him to terminate the state of disaster emergency. His power to unilaterally proclaim emergencies rested upon the condition that the General Assembly could terminate it at any time. If the General Assembly cannot terminate his power, then that delegation of emergency power to the Governor is blatantly unconstitutional.

### **NCLA released the following statement:**

“Governor Wolf thinks that his ability to declare an emergency can never be limited or controlled by the elected representatives in the legislature. Only dictators have that kind of unlimited power.”

— **Caleb Kruckenberg, Litigation Counsel, NCLA**

“There is no freedom left to celebrate in Pennsylvania this Fourth of July. If the statute that the Governor used to declare an emergency allows him to enjoy legislative power that the legislature cannot easily take back, then that statute is unconstitutional. The people ‘vested’ the legislative power in the legislature, and the Pennsylvania Constitution does not allow the legislature to give up that power or ‘divest’ it to the Governor. To rule as the Supreme Court did takes the Commonwealth back to early colonial times under royal reign where the King could suspend statutes at will. This outcome is more frightening than the coronavirus.”

— **Mark Chenoweth, Executive Director and General Counsel, NCLA**

## **ABOUT NCLA**

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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