

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

PATRICK J. McDONNELL, SECRETARY :  
OF THE DEPARTMENT OF :  
ENVIRONMENTAL PROTECTION :  
and CHAIRPERSON OF THE :  
ENVIRONMENTAL QUALITY :  
BOARD, :

Petitioner, :

v. :

PENNSYLVANIA LEGISLATIVE :  
REFERENCE BUREAU, VINCENT C. :  
DeLIBERATO, JR., DIRECTOR OF THE :  
LEGISLATIVE REFERENCE BUREAU, :  
and AMY J. MENDELSON, DIRECTOR :  
OF THE PENNSYLVANIA CODE and :  
BULLETIN, :

No. 41 MD 2022

Respondents, :

SENATE PRESIDENT PRO TEMPORE :  
JAKE CORMAN, et al., :

Senate Intervenor :  
Respondents, :

HOUSE SPEAKER BRYAN CUTLER, :  
et al., :

House Intervenor :  
Respondents. :

**NOTICE OF APPEAL**

Notice is hereby given that Patrick McDonnell, in his official capacity as Secretary of the Pennsylvania Department of Environmental Protection (“DEP”) and

Chairperson of the Environmental Quality Board (“EQB”), Petitioner in the above-captioned action, hereby appeals to the Supreme Court of Pennsylvania from the Order entered in this matter on the 5<sup>th</sup> day of April, 2022, which enjoined publication of the Regional Greenhouse Gas Initiative Regulation in the *Pennsylvania Bulletin* by the Legislative Reference Bureau. This Order has been entered in the docket as evidenced by the attached copy of the docket entry (“Exhibit A”).

This Notice of Appeal is accompanied by a Jurisdictional Statement, as required by Pa.R.A.P. 909 and 910.

Dated: April 7, 2022

Respectfully submitted,

/s/ Matthew A. White  
Matthew A. White (Pa. 55812)  
Brian N. Kearney (Pa. 326227)  
BALLARD SPAHR LLP  
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215.665.8500

Attorneys for Petitioner

EXHIBIT A  
to Notice of Appeal  
(41 MD 2022 Docket Entry)

Miscellaneous Docket Sheet

Docket Number: 41 MD 2022

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April 7, 2022



CAPTION

Patrick J. McDonnell, Secretary of the Department of Environmental Protection and Chairperson of the Environmental Quality Board, Petitioner

v.

Pennsylvania Legislative Reference Bureau, Vincent C. DeLiberato, Jr., Director of the Legislative Reference Bureau, and Amy J. Mendelsohn, Director of the Pennsylvania Code and Bulletin, Respondents

CASE INFORMATION

Initiating Document: Petition for Review
Case Status: Active
Case Processing Status: April 5, 2022 Awaiting Petitioner Paperbooks
Journal Number:
Case Category: Miscellaneous Case Type(s): Equity

CONSOLIDATED CASES

RELATED CASES

COUNSEL INFORMATION

Petitioner McDonnell, Patrick J.

Pro Se: No

IFP Status:

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Fax No:

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Fax No:

## Miscellaneous Docket Sheet

Commonwealth Court of Pennsylvania

Docket Number: 41 MD 2022

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## DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
<b>March 31, 2022</b>	Application to Amend Pittinsky, David	McDonnell, Patrick J.	Petitioner	
	Document Name: Praecipe to Amend Pet's Answer to Senate Intervenor Respondents' App. for Special Relief			
<b>March 31, 2022</b>	Answer Filed Pittinsky, David	McDonnell, Patrick J.	Petitioner	
	Document Name: Response in Partial Opposition to App for Leave to Withdraw Original Brief and to File Amended Brief			
<b>April 1, 2022</b>	Application for Relief Klein, Peter William	Pennsylvania Legislative Reference	Respondent	
	Klein, Peter William	DeLiberato, Jr., Vincent C.	Respondent	
	Klein, Peter William	Mendelsohn, Amy J.	Respondent	
	Document Name: App for Leave to Amend New Matter in Respondent's Answer to Senate Intervenor Respondent's App for Comment: Special Relief in the Nature of a Preliminary Injunction			
<b>April 1, 2022</b>	Answer Filed Hull, Kandice Kerwin	Corman, Jake	Intervenor	
	Hull, Kandice Kerwin	Ward, Kim	Intervenor	
	Hull, Kandice Kerwin	Yaw, Gene	Intervenor	
	Hull, Kandice Kerwin	Browne, Pat	Intervenor	
	Document Name: Senate Intervenor's Response to Petitioner's Request for an Extension of Time to File Comment: Brief in Opposition to Senate Intervenors' App for Relief			
<b>April 1, 2022</b>	Memorandum of Law Filed Cutler, Bryan D.		Intervenor	
	Benninghoff, Kerry A.		Intervenor	
	Metcalfe, Daryl D.		Intervenor	
	Document Name: Memo of Law in Opposition to Application for Expedited Special and Summary Relief			

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## DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
April 1, 2022	Order Filed Per Curiam			04/04/2022
	Document Name: Respondent's to file Amended Brief within the timeframe of March 29, 2022 order			
	Comment: NOW, April 1, 2022, upon review of Respondents' "Application for Leave to Withdraw Original Brief and to File an Amended Brief," which Petitioner does not generally oppose, <sup>1</sup> the Application is GRANTED. Respondents shall file and serve their amended brief (4 copies) in support of their preliminary objections within the time prescribed by the Court's March 29, 2022, Order.			
	<p><sup>1</sup> While Petitioner does not generally oppose Respondents' Application, he argues Respondents should not be permitted to amend their brief to address preliminary objections to Count I of the petition for review. Respondents provide no reason why they seek to amend their brief; they recognize that their brief was filed before this Court issued its briefing schedule on the preliminary objections. Petitioner may seek to amend his brief in opposition to Respondents' preliminary objections after Respondents' amended brief is filed and served. This is the normal course of briefing; however, Petitioner also filed his brief in opposition to the preliminary objections before this Court issued its briefing schedule.</p> <p><sup>2</sup></p> <p>To the extent that Petitioner's Answer to Senate Intervenor Respondents' Application for Special Relief in the Nature of a Preliminary Injunction can be considered an application for extension of time to file a brief in reply to Senate Intervenors' Application and brief, the request is GRANTED. No later than Monday, April 25, 2022, 12:00 p.m., Petitioner shall file and serve his brief (3 copies) in reply to Senate Intervenor Respondents' brief in support of their Application for Special Relief.</p> <p>A hearing on Senate Intervenor Respondents' Application for Special Relief in the Nature of a Preliminary Injunction shall commence on Wednesday, May 4, 2022, at 10:00 a.m., in Courtroom 3001, Pennsylvania Judicial Center, Third Floor, 601 Commonwealth Avenue, Harrisburg, Pa.</p> <p>Senate Intervenor Respondents shall file a list of all witnesses to be called at the hearing with a short offer of proof for each witness, the curriculum vitae and expert report for any expert witness, and a list of exhibits, no later than Wednesday, April 20, 2022.</p> <p>Petitioner, Respondents, and House Intervenor Respondents shall file a list of all witnesses to be called at the hearing with a short offer of proof for each witness, the curriculum vitae and expert report for any expert witness, and a list of exhibits, no later than Wednesday, April 20, 2022.</p> <p>The parties are directed to provide their witnesses with copies of the exhibits in advance of the hearing to which the witnesses can refer during their testimony.</p> <p>The parties are strongly encouraged to consult prior to the filing of their list of witnesses and exhibits and, if possible, enter evidentiary and/or factual</p> <p><sup>3</sup></p> <p>stipulations and/or agreed-upon protocols in order to streamline the proceedings. The parties may PAC-file any joint stipulations or protocols prior to the hearing.</p> <p>To reduce the risk of transmission of the COVID-19 virus, all persons participating in or observing the hearing shall adhere to all Pennsylvania Judicial Center and Commonwealth Court COVID-19 precautions and protocols while in the Pennsylvania Judicial Center, that may include, but not be limited to, the wearing of facemasks and social distancing.</p>			
April 4, 2022	Answer to Preliminary Objections Pittinsky, David	McDonnell, Patrick J.	Petitioner	
	Document Name: Petitioner's Answer to House Intervenors' POs			
April 4, 2022	Answer Filed Pittinsky, David	McDonnell, Patrick J.	Petitioner	
	Document Name: Petitioner's Answer in Opp. to the Senate Intervenors' Extraordinary Request that this Court Enter			
	Comment: an Interim Order (Without Hearing or Argument) Prohibiting Publication of the RGGI Rulemaking in the Pennsylvania Bulletin			

## Miscellaneous Docket Sheet

Commonwealth Court of Pennsylvania

Docket Number: 41 MD 2022

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## DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
<b>April 5, 2022</b>	Praeipice Pittinsky, David	McDonnell, Patrick J.	Petitioner	
	Document Name: Praeipice to Provide Relevant Information to the Court			
<b>April 5, 2022</b>	Application for Relief Kutz, James John	Cutler, Bryan D.	Intervenor	
	Kutz, James John	Benninghoff, Kerry A.	Intervenor	
	Kutz, James John	Metcalfe, Daryl D.	Intervenor	
	Kawa, Erin Renee	Metcalfe, Daryl D.	Intervenor	
	Kawa, Erin Renee	Benninghoff, Kerry A.	Intervenor	
	Document Name: App to Join Senate Intervenors' Request for Interim Order			
<b>April 5, 2022</b>	Order Filed Per Curiam			04/05/2022
	Document Name: Processing of the Regional Greenhouse Gas Initiative Regulation for Publication is Stayed			
	Comment: NOW, April 5, 2022, processing of the Regional Greenhouse Gas Initiative Regulation for publication in the Pennsylvania Bulletin is stayed pending further order of the Court.			
<b>April 6, 2022</b>	Status Conference Scheduled Per Curiam			04/06/2022
	Document Name: Tuesday, April 12, 2022, at 1:00 p.m. in Courtroom 5001, 5th Floor, PJC, Hbg., PA			
	Comment: NOW, April 6, 2022, a status conference in the above matter is scheduled for Tuesday, April 12, 2022, at 1:00 p.m. in Courtroom 5001, 5th Floor, Pennsylvania Judicial Center, 601 Commonwealth Avenue, Harrisburg, Pa.			
	To reduce the risk of transmission of the COVID-19 virus, all persons participating in the status conference shall adhere to all Pennsylvania Judicial Center and Commonwealth Court COVID-19 precautions and protocols while in the Pennsylvania Judicial Center, that may include, but not be limited to, the wearing of facemasks and social distancing.			

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

PATRICK J. McDONNELL, SECRETARY :  
OF THE DEPARTMENT OF :  
ENVIRONMENTAL PROTECTION :  
and CHAIRPERSON OF THE :  
ENVIRONMENTAL QUALITY :  
BOARD, :

Petitioner, :

v. :

PENNSYLVANIA LEGISLATIVE :  
REFERENCE BUREAU, VINCENT C. :  
DeLIBERATO, JR., DIRECTOR OF THE :  
LEGISLATIVE REFERENCE BUREAU, :  
and AMY J. MENDELSON, DIRECTOR :  
OF THE PENNSYLVANIA CODE and :  
BULLETIN, :

No. 41 MD 2022

Respondents, :

SENATE PRESIDENT PRO TEMPORE :  
JAKE CORMAN, et al., :

Senate Intervenor :  
Respondents, :

HOUSE SPEAKER BRYAN CUTLER, :  
et al., :

House Intervenor :  
Respondents. :

**JURISDICTIONAL STATEMENT IN SUPPORT OF NOTICE OF APPEAL**



Pursuant to Pennsylvania Rules of Appellate Procedure 311(A)(4), 909, and 910, Patrick McDonnell, in his official capacity as Secretary of the Pennsylvania Department of Environmental Protection (“DEP”) and Chairperson of the Environmental Quality Board (“EQB”), Petitioner in the above-captioned action, hereby submits this Jurisdictional Statement in support of his Notice of Appeal from the Commonwealth Court’s April 5, 2022 Order enjoining publication of the Regional Greenhouse Gas Initiative (“RGGI”) Regulation in the *Pennsylvania Bulletin* by the Legislative Reference Bureau (“LRB”), the Respondents in this action.

### **I. Opinion Below**

This is an appeal from the *per curiam* Order of the Commonwealth Court entered on April 5, 2022 (the “Order”). A copy of the Order is attached as Exhibit A. The Court has not issued an opinion to accompany the Order.

### **II. Basis for Jurisdiction of the Supreme Court**

This appeal is commenced as a matter of right. *See* Pa.R.A.P 1101. The Supreme Court has exclusive jurisdiction over appeals from appealable orders of the Commonwealth Court entered in any matter that was originally commenced in the Commonwealth Court. *See* 42 Pa.C.S. § 723(a); Pa.R.A.P. 1101(a)(1). This matter was commenced in the Commonwealth Court pursuant to its original jurisdiction. *See* 42 Pa.C.S. § 761(a)(1) and (2).

The April 5, 2022 Order staying the publication process of the RGGI Regulation by the LRB in the *Pennsylvania Bulletin* is an immediately appealable interlocutory order because it is “[a]n order that grants . . . an injunction[.]” Pa.R.A.P. 311(a)(4). This Order enjoins the LRB from performing its non-discretionary ministerial duty to publish a duly-promulgated regulation in the *Pennsylvania Bulletin*. The Court issued the Order without hearing or oral argument in violation of Pa. R.C.P. 1531. This appeal is focused solely on the Court’s Order enjoining LRB from performing its mandatory, non-discretionary duty to publish the RGGI Regulation and not the merits of the Regulation. The Commonwealth Court’s April 5, 2022 Order was improvidently entered.

### **III. Text of the Order in Question**

This appeal seeks review of the April 5, 2022 Order in its entirety:

NOW, April 5, 2022, processing of the Regional Greenhouse Gas Initiative Regulation for publication in the *Pennsylvania Bulletin* is stayed pending further order of the Court.

### **IV. Concise Statement of Procedural History**

Petitioner commenced this case in the Commonwealth Court’s original jurisdiction on February 3, 2022, by filing a Petition for Review seeking declaratory relief and a writ of mandamus (the “Petition”) to compel the LRB to publish the RGGI Regulation, and an Application for Expedited Special and Summary Relief (the “Application for Relief”). Respondents opposed expedited relief, leading

Petitioner to request an expedited briefing schedule and oral argument on February 23, which the Court denied via a February 25 *per curiam* Order.

On February 24, 2022, the Speaker, Majority Leader, and a committee chair of the Pennsylvania House of Representatives (the “House Intervenors”) filed for leave to intervene. The next day, the President Pro Tempore, Majority Leader, and two committee chairs of the Pennsylvania Senate (the “Senate Intervenors”) also filed for leave to intervene. None of the parties opposed intervention, and the Court issued a March 4 *per curiam* Order granting both applications.

On March 25, 2022, Senate Intervenors (with House Intervenors concurring) filed an application for a preliminary injunction – specifically, to enjoin the parties and any other governmental officials “from promulgating and/or publishing” the RGGI Rule. On March 28, the Court issued another *per curiam* Order, directing the parties to answer the application within 48 hours. Petitioner opposed the application; Respondents took no position, except to note that they would (as required by statute) publish the RGGI Regulation in “the first available *Pennsylvania Bulletin* if deemed approved by the General Assembly.”

On April 1, 2022, the Court issued a *per curiam* Order, setting a hearing on the preliminary injunction application for May 4, 2022. In response, Senate Intervenors immediately submitted a filing that, although styled as a response to

Petitioner’s inquiry regarding the briefing schedule, contained a request to enjoin publication of the RGGI Rule until at least the May 4 hearing.

On April 4, 2022, the Senate failed to override Governor Wolf’s veto of S.C.R.R.R. 1, a concurrent resolution disapproving the RGGI Regulation. Under Section 7(d) of the Regulatory Review Act (71 P.S. §745.7(d)), that failure meant the RGGI Regulation was deemed approved by the General Assembly, and thus duly promulgated. As the LRB noted in its April 1 filing with this Court, “[u]pon expiration of the time period under section 7(d), the [LRB] **must** publish the Trading Program [i.e. the RGGI] Regulation in the next available issue of the *Pennsylvania Bulletin*[.]” Respondents’ Application for Leave, ¶3 (emphasis added).

The next day, April 5, House Intervenors joined Senate Intervenors’ request for an order prohibiting publication by the LRB until at least the May 4 hearing. Within hours, the Court filed the *per curiam* Order that is the subject of this appeal. The Court did not set an argument or hearing date for this Order.

**V. Question Presented for Review**

Did the Commonwealth Court err as a matter of law in issuing an injunction, without argument or a hearing, enjoining and restraining the LRB's publication of the RGGI Regulation, a ministerial duty mandated by statute?

*Suggested Answer: Yes.*

Dated: April 7, 2022

Respectfully submitted,

/s/ Matthew A. White  
Matthew A. White (Pa. 55812)  
Brian N. Kearney (Pa. 326227)  
BALLARD SPAHR LLP  
1735 Market Street, 51<sup>st</sup> Floor  
Philadelphia, PA 19103  
215.665.8500

Attorneys for Petitioner

EXHIBIT A  
to Jurisdictional Statement  
(April 5, 2022 *per curiam* Order)

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Patrick J. McDonnell, Secretary :  
of the Department of Environmental :  
Protection and Chairperson of the :  
Environmental Quality Board, :  
Petitioner :  
 :  
 :  
v. :  
 :  
 :  
Pennsylvania Legislative Reference :  
Bureau, Vincent C. DeLiberato, Jr., :  
Director of the Legislative Reference :  
Bureau, and Amy J. Mendelsohn, :  
Director of the Pennsylvania Code :  
and Bulletin, :  
Respondents : No. 41 M.D. 2022

**PER CURIAM**

**ORDER**

NOW, April 5, 2022, processing of the Regional Greenhouse Gas Initiative Regulation for publication in the Pennsylvania Bulletin is stayed pending further order of the Court.

**CERTIFICATION**

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: April 7, 2022

/s/ Matthew A. White

Matthew A. White  
(Pa. 55812)



**CERTIFICATE OF SERVICE**

Pursuant to Pa.R.A.P. 906(a), I, Matthew A. White, hereby state that I have caused to be served a true and correct copy of the foregoing Notice of Appeal via the Court's PACFile.

Pursuant to Pa.R.A.P. 906(b), I also hereby state that I have caused to be served upon all parties to the matter a true and correct copy of the accompanying Jurisdictional Statement required by Pa.R.A.P. 909 via the Court's PACFile.

Dated: April 7, 2022

/s/ Matthew A. White  
Matthew A. White