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**House of Representatives**

Commonwealth of Pennsylvania  
Harrisburg

**MARK K. KELLER**

86th Legislative District

REPUBLICAN DEPUTY WHIP

**COMMITTEES**

Agriculture & Rural Affairs  
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*Chairman of the Subcommittee  
on Highways*

**MEMORANDUM**

**TO:** All House Members  
**FROM:** Representative Mark K. Keller *MKK.*  
**SUBJECT:** Pennsylvania Power of Attorney Act  
**DATE:** October 4, 2011

In the near future, I am planning to introduce legislation that will address problems created by Pennsylvania Supreme Court decision *Vine v. Commonwealth*, 9 A.3d 1150 (Pa. 2010) that have the potential to increase liability for third parties when they accept powers of attorney in good faith in a manner that may make them reluctant to accept instructions issued by agents pursuant to powers of attorney, thereby creating problems for family members seeking to assist elderly and disabled relatives.

By way of background, after being injured in an automobile accident and subsequently suffering from a stroke, Teresa M. Vine ("Vine") signed a power of attorney naming her husband as an agent and her husband used the power of attorney to make a pension election. Her signature on the power of attorney consisted of an "X" marked on the appropriate line and was witnessed by nurse in the hospital in which she was being treated. Five years later, Vine and her husband divorced, and she sought to revoke her pension election. The Pennsylvania State Employees Retirement System denied Vine's request and Vine argued that the power of attorney was invalid because she lacked capacity at the time the document was executed. The State Employee Retirement System claimed third party immunity under *The Probate, Estates and Fiduciaries Code for good faith acceptance of the power of attorney without knowledge of her alleged incapacity*, but the Pennsylvania Supreme Court ruled that section 5608 of the Probate, Estates and Fiduciaries Code did not protect the retirement system from liability because the woman had lacked the capacity to execute the power of attorney and, as a result, the power of attorney was not valid.

The *Vine Court* held that the immunities from civil liability provided for the good faith acceptance of a power of attorney by the Pennsylvania Power of Attorney Act do not apply to the good faith acceptance of a power of attorney that is void or voidable. The Supreme Court arrived at this conclusion because unlike comparable provisions of the Uniform Power of Attorney Act and the laws of several other states, Pennsylvania law does not expressly set forth the circumstances in which the good faith acceptance of a power of attorney that is void or invalid are protected.

Since the *Vine* decision, a third party who acts at an agent's direction pursuant to a power of attorney does so at their peril unless determining first that the power of attorney is in fact valid and the agent is in fact authorized. Since conducting such an investigation is time-consuming, potentially costly, and cumbersome, an alternative is for third parties to simply decline to engage in transactions in which a power of attorney is involved. Increasingly many third parties are opting for the latter approach resulting in a disruption to banking affairs, real estate transactions, and estate planning.

My proposal will amend the Pennsylvania Power of Attorney Act to provide a remedy to the problems with current Pennsylvania law identified by the *Vine Court*, and address a small number of other closely related issues by adopting the requirements of Uniform Power of Attorney Act relating to the acceptance and reliance upon powers of attorney; the liability for refusing to accept powers of attorney; the definition of "good faith;" and the application of the amendments to previously executed powers of attorneys. The legislation will afford civil immunity protection to third parties that in good faith accept a facially valid power of attorney.

If you would like to join me in sponsoring this legislation, which will ameliorate the effects of *Vine*, and restore expediency and efficiency to the Commonwealth's Power of Attorney Act, please contact Kori Weikle in my Harrisburg office at (717) 783-1593.