

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

**WILLIAM PENN SCHOOL DISTRICT *et al.*,
Petitioners**

v.

**PENNSYLVANIA DEPARTMENT OF EDUCATION *et al.*,
Respondents**

NO. 587 M.D. 2014

**SUPPLEMENTAL BRIEF OF
RESPONDENT STATE BOARD OF EDUCATION
IN SUPPORT OF PRELIMINARY OBJECTIONS**

**Petition for Review in the Nature of an
Action for Declaratory and Injunctive Relief**

**THOMAS A. BLACKBURN
Supreme Court I.D. Number 59383
Counsel for State Board of Education**

**DEPARTMENT OF STATE
2601 North Third Street
P.O. Box 69523
Harrisburg, PA 17106-9523
(717) 783-7200**

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STATEMENT OF JURISDICTION

This Court has jurisdiction with respect to this original jurisdiction petition for review against the Executive Respondents and the Legislative Respondents, pursuant to section 761(a) of the Judicial Code, 42 Pa.C.S. § 761(a) (Commonwealth Court has original jurisdiction of all civil actions or proceedings against the Commonwealth government, including any officer acting in his official capacity).

STATEMENT OF SCOPE OF REVIEW AND STANDARD OF REVIEW

In ruling upon preliminary objections, the Court must accept as true all well-pleaded material allegations in the petition for review, as well as all inferences reasonably deduced therefrom. *Shore v. Pennsylvania Dept. of Corrections*, 168 A.3d 374, 378-79 (Pa. Cmwlth. 2017). The Court need not accept as true conclusions of law, unwarranted inferences, argumentative assertions or expressions of opinion. *Id.* Preliminary objections should only be sustained where the law says with certainty that no recovery is possible. *Doheny v. Commonwealth, Dept. of Trans., Bur. of Driver Licensing*, 171 A.3d 930, 934 n. 10 (Pa. Cmwlth. 2017). Where a preliminary objection presents a question of law, the Court's standard of review is *de novo*, and its scope of review is plenary. *Id.*

STATEMENT OF THE QUESTIONS INVOLVED

A. Whether sovereign immunity bars a court from ordering the legislature to make funding decisions in a specified manner?

Suggested Answer: YES.

B. Whether the doctrine of separation of powers precludes a court from continued supervision of the legislative and executive branches in funding public schools?

Suggested Answer: YES.

STATEMENT OF THE CASE

On November 10, 2014, a group of public school districts, students, parents and advocacy organizations (Petitioners) filed a petition for review in this Court's original jurisdiction against the Speaker of the House of Representatives and the President *pro tempore* of the Senate (Legislative Respondents) and the Governor, the Department of Education, the Secretary of Education and the State Board of Education (Executive Respondents). The petition sought declaratory and injunctive relief because, as it alleged, the current public-school funding scheme violates the Education Clause and the Equal Protection Clause of the Pennsylvania Constitution. Petitioners request the Court to enter permanent injunctions compelling Respondents to establish, fund and maintain a thorough and efficient system of public education that provides all students in Pennsylvania with an equal opportunity to obtain an adequate education that will enable them to meet state academic standards and participate meaningfully in the economic, civic and social activities of society; and compelling Respondents, after a reasonable period of time, to develop a school-funding arrangement that complies with the Education Clause and the Equal Protection Clause, and to cease implementing a school-funding arrangement that does not assure that adequate, necessary and sufficient funds are available to school districts to provide their students with an equal opportunity to obtain an adequate education that will enable them to meet state academic standards and participate

meaningfully in the economic, civic and social activities of society. Petitioners also request that the Court retain continuing jurisdiction over this matter until such time as the Court has determined that Respondents have fully and properly fulfilled the Court's orders.

On December 10, 2014, Legislative Respondents filed preliminary objections asserting that: this matter is a non-justiciable political question and the petition fails to state a claim because the education funding system serves the rational basis of preserving local control over public education – an appropriate standard as the right to education is not a fundamental right. On December 19, 2014, Petitioners filed an answer to these preliminary objections. On December 10, 2014, Executive Respondents also filed preliminary objections asserting that: this matter is a non-justiciable political question, the petition fails to state a claim because the statutory scheme establishing and providing for public education is rationally related to legitimate governmental objectives, the claims for relief are barred by sovereign immunity, and the claims for relief are barred by the separation of powers doctrine. On December 19, 2014, Petitioners filed an answer to these preliminary objections. On January 16, 2015, Legislative Respondents and Executive Respondents filed their respective supporting briefs, and on February 17, 2015, Petitioners filed a brief in opposition to both sets of preliminary objections. On March 3, 2015, Legislative Respondents and Executive Respondents filed respective reply briefs.

Following argument on March 11, 2015, in an *en banc* opinion issued April 21, 2015, this Court held that both the Education Clause and Equal Protection Clause claims in this matter are nonjusticiable political questions. The Court sustained the Legislative Respondents' and Executive Respondents' first preliminary objection and dismissed the petition for review. The Court did not rule on any other preliminary objections.

Petitioners appealed to the Supreme Court. On September 28, 2017, the Supreme Court reversed Commonwealth Court's order and remanded for further proceedings. The Supreme Court held that the Education Clause of the Pennsylvania Constitution compels the court's "judicial duty to construe [this] interpretation-begging state education clause[] to ensure legislative compliance with [this] constitutional mandate[], no matter the difficulties invited or ... confronted." *William Penn S.D. v. Dept. of Education*, 170 A.3d 414, 463 (Pa. 2017). The Supreme Court further held that whether Petitioner's Equal Protection claims are viewed as intertwined with the Education Clause claims or assessed independently, those claims are not subject to judicial abstention under the political question doctrine. *Id.* at 464. As Commonwealth Court had not ruled on the preliminary objections other than justiciability, the Supreme Court also did not address them, and its decision was not intended to prejudice the respondents' right to pursue further the other objections. *See, id.* at 433, n. 29.

By order dated November 17, 2017, Commonwealth Court directed the respondents to file an answer to the petition for review. On December 5, 2017, the Speaker (now represented by counsel separate from the President *pro tem*) filed an application requesting the Court to permit supplemental briefing and argument on Legislative Respondent's preliminary objections and defer the filing of any answer to the petition for review. By order dated December 18, 2017, the Court directed that no answer to the petition for review is due from any party until further order. By order dated January 4, 2018, this Court granted the application to permit supplemental briefing.

The State Board of Education submits this brief in further support of the Executive Respondents' preliminary objections to the petition for review.

SUMMARY OF ARGUMENT

Because granting these claims would result in compelling an affirmative performance by government officials, Petitioners' claims are barred by the doctrine of sovereign immunity.

Because Petitioners seek to have the courts supervise ongoing funding decisions by the General Assembly, this requested relief requires the judiciary to perform a legislative function and is precluded by the doctrine of separation of powers.

ARGUMENT

A. PETITIONERS’ CLAIMS ARE BARRED BY SOVEREIGN IMMUNITY.

The Board incorporates by reference argument section III.A of the Executive Respondents’ supporting brief filed January 16, 2015.

B. PETITIONERS’ REQUESTED RELIEF IS PRECLUDED BY THE DOCTRINE OF SEPARATION OF POWERS.

The Board incorporates by reference argument section III.B of the Executive Respondents’ supporting brief filed January 16, 2015.

The separation of powers doctrine¹ provides that the executive, legislative, and judicial branches of government are equal and none should exercise powers exclusively committed to another branch. *Germantown Cab Co. v. Philadelphia Parking Auth.*, 171 A.3d 315, 330 (Pa. Cmwlth. 2017). A legislative action that impairs the independence of the judiciary violates the doctrine of separation of

¹ The political question doctrine has its basis in the separation of powers doctrine. *See, William Penn S.D.*, 170 A.3d at 437 (political question doctrine is essentially a function of the separation of powers, deriving in large part from prudential concerns about the respect the judiciary owes the political departments). The Supreme Court held in this case that the political question doctrine does not preclude the courts from determining whether the General Assembly is in compliance with its Constitutional obligation to provide for the maintenance and support of a thorough and efficient system of public education. Of course, the arguments presented in this brief are not intended to attempt to reconsider that holding. Instead, this argument addresses only Petitioners’ request for court supervision of Respondents and the ability of the courts to engage in such supervision. The Court did not foreclose this challenge and carefully limited the scope of its decision. *See, id.*, at 435, n. 34 (“this Court is not asked at this juncture to decide the constitutionality of a particular funding formula, but rather whether a claim regarding the constitutionality of any funding formula may be litigated or instead lies entirely outside judicial review”).

powers, and its corollary is that a judicial action that infringes upon the legislative function violates the separation of powers doctrine. *Thomas v. Grimm*, 155 A.3d 128, 138 n. 15 (Pa. Cmwlth. 2017).

The Education Clause compels the General Assembly to “provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.” PA. CONST. art. 3, § 14. However, appropriating funds for, among other things, public education, is a legislative function. *See*, PA. CONST. art. 3, § 11 (general appropriation bill shall embrace nothing but appropriations for the executive, legislative and judicial departments of the Commonwealth, for the public debt and for public schools). Legislative power of this Commonwealth is vested in the General Assembly. PA. CONST. art 2, § 1. The legislative power is the power to make, alter and repeal laws; judicial action infringing on the legislative function violates the separation of powers. *Pennsylvania State Assn. of Jury Comrs. v. Com.*, 78 A.3d 1020, 1033 (Pa. 2013)**Error! Bookmark not defined..**

Petitioners request the Court to enter permanent injunctions compelling Respondents to establish, fund and maintain a thorough and efficient system of public education that provides all students in Pennsylvania with an equal opportunity to obtain an adequate education that will enable them to meet state academic standards and participate meaningfully in the economic, civic and social activities

of society; and compelling Respondents, after a reasonable period of time, to develop a school-funding arrangement that complies with the Education Clause and the Equal Protection Clause, and to cease implementing a school-funding arrangement that does not assure that adequate, necessary and sufficient funds are available to school districts to provide their students with an equal opportunity to obtain an adequate education that will enable them to meet state academic standards and participate meaningfully in the economic, civic and social activities of society. Petitioners also request that the Court retain continuing jurisdiction over this matter until such time as the Court has determined that Respondents have fully and properly fulfilled the Court's orders.

To permit this matter to move forward would by necessity result in the Court maintaining continuing oversight of the relative policy choices of the General Assembly in funding public schools. *See, William Penn S.D.*, 170 A.3d at 483-484 (Saylor, C.J. dissenting) (it should not be overlooked that any declaration that the legislature is in violation of the Education Clause would have little practical effect absent judicial monitoring to ensure compliance with judicial directives, and the judicial branch would then become entangled in ongoing school-funding litigation, requiring continuing oversight of a co-equal branch of government); *Kuren v. Luzerne County*, 146 A.3d 715, 755 (Pa. 2016) (Baer, J. concurring), citing *Dorris v. Lloyd*, 100 A.2d 924, 927 (Pa. 1953) (judgment against governmental agency

should not necessitate the court to maintain continuous oversight over the manner in which agency is funded, as “mandamus is to coerce the performance of single acts of specific and imperative duty, ... and ordinarily it is not an appropriate remedy to compel a general course of official conduct or a long series of continuous acts, to be performed under varying conditions”).

Continuous funding of the public schools is clearly a legislative function. Respondents’ acts of “establish[ing], fund[ing] and maintain[ing] a thorough and efficient system of public education that provides all students in Pennsylvania with an equal opportunity to obtain an adequate education that will enable them to meet state academic standards and participate meaningfully in the economic, civic and social activities of society” constitute a legislative function; “develop[ing] a school-funding arrangement that complies with the Education Clause and the Equal Protection Clause, and [ceasing to implement] a school-funding arrangement that does not assure that adequate, necessary and sufficient funds are available to school districts to provide their students with an equal opportunity to obtain an adequate education that will enable them to meet state academic standards and participate meaningfully in the economic, civic and social activities of society” constitute a legislative function. Retaining “continuing jurisdiction over this matter until such time as the Court has determined that Respondents have fully and properly fulfilled the Court’s orders” requires the judiciary to continuously determine and direct those

legislative functions; it would thus be judicial action directly infringing upon this legislative function. Granting the relief sought by Petitioners would violate the separation of powers doctrine.

Accordingly, this Court should find that the relief requested by Petitioners would violate the separation of powers doctrine and dismiss this matter.

CONCLUSION

For the foregoing reasons, the State Board of Education respectfully requests that this Honorable Court sustain Executive Respondents' preliminary objections and dismiss the petition for review.

Respectfully submitted,

/s/ Thomas A. Blackburn

Thomas A. Blackburn

Supreme Court I.D. Number 59383

Counsel for the State Board of Education

Department of State

2601 North Third Street

P.O. Box 69523

Harrisburg, PA 17106-9523

(717) 783-7200