

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 587 MD 2014

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

v.

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

**SUPPLEMENTAL BRIEF ON
EXECUTIVE BRANCH RESPONDENTS' PRELIMINARY OBJECTIONS
TO THE PETITION FOR REVIEW**

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TABLE OF CONTENTS

	<u>Page(s)</u>
STATEMENT OF JURISDICTION.....	1
STATEMENT OF THE CASE.....	2
Procedural History	3
Statement of Facts.....	6
ARGUMENT	9
CONCLUSION.....	11

TABLE OF AUTHORITIES

<u>CASES</u>	<u>Page(s)</u>
<i>Danson v. Casey</i> , 484 Pa. 415 (Pa. 1979)	10
<i>Fawber v. Cohen</i> , 532 A.2d 429 (Pa. 1987)	11
<i>Marrero v. Commonwealth</i> , 559 Pa. 14 (Pa. 1999).....	11
<i>Philadelphia Life Ins. Co., v. Comm.</i> , 190 A.2d 111 (1963).....	11
<i>William Penn Sch. Dist. v. Pa. Dep’t of Educ.</i> , 170 A.3d 414 (Pa. 2017).....	5,10
<i>William Penn Sch. Dist. V. Pa. Dep’t of Educ.</i> , 114 A.3d 456 & n. 15 (Pa. Cmwlth. 2015).....	4
<u>STATUTES</u>	<u>Page(s)</u>
Act of Jul. 10, 2014, P.L. 3051, No. 1A § 213	7,8
1 Pa.C.S. § 2310	6,10
Public School Code of 1949	
24 P.S. §§ 1-101, <i>et seq.</i>	6
24 P.S. §§ 2-201 to 2-298	6
24 P.S. §§ 3-301 to 5-5427	7
24 P.S. §§ 7-701 to 7-791	7
24 P.S. §§ 8-801 to 8-810	7
24 P.S. §§ 9-951 to 9-974	7
24 P.S. §§ 11-1101 to 12-1268	7

STATUTES (cont'd)

Page(s)

24 P.S §§ 13-1301 to 13-13457

24 P.S. §§ 14-1401 to 14-14227

24 P.S. §§ 15-1501 to 15-15477

24 P.S. §§ 25-2501(14) and (14.1)8

Act of Jun. 1, 2016, P.L. 252, No. 35

24 P.S. § 25-2502.534,5,9

24 P.S. § 26-2601-B6

24 P.S. § 26-2602-B6

24 P.S. § 26-2603-B6

42 Pa.C.S. § 761(a)1

71 P.S. §§ 61-626

71 P.S. § 3526

CONSTITUTIONAL PROVISIONS

Page(s)

Pa. Const. art. III, § 142

Pa. Const. art. III, § 322

STATEMENT OF JURISDICTION

This is a civil action against the Governor of Pennsylvania, Commonwealth executive agencies and officials, as well as the President Pro-Tempore of the House of Representatives and the Speaker of the House of Representatives. This Court has original jurisdiction pursuant to 42 Pa.C.S. § 761(a).

STATEMENT OF THE CASE

Petitioners filed the within action alleging that the statutory scheme for funding K-12 education in Pennsylvania violates the state Constitution. The Petitioners are six school districts, the Pennsylvania Association of Rural and Small Schools, several parents of school-age children, and the Pennsylvania State Conference of the National Association for the Advancement of Colored People. The Respondents are Governor Tom Wolf, the Secretary of Education Pedro A. Rivera, the Department of Education (collectively referred to as “Executive Respondents”), the State Board of Education, the President *Pro Tempore* of the Pennsylvania Senate, and the Speaker of the Pennsylvania House of Representatives.

Petitioners claim that the statutory funding scheme in place at the time the Petition was filed violates Article 3, §§ 14 (the “Education Clause”) and 32 (the “Equal Protection Clause”) of the Pennsylvania Constitution. Petitioners claim that the Commonwealth’s academic Common Core standards set forth a course of study for students and a progression from grade-to-grade that forms the core of the Commonwealth’s public education system, but that Respondents have violated their constitutional duties by failing to provide sufficient resources to meet those standards because the funding levels are irrational, arbitrary and not reasonably calculated to ensure that all students will receive the required services to obtain the required sufficiency in the subject areas. They seek injunctive and declaratory relief,

including a mandatory injunction “compelling” the Respondents to “establish, fund and maintain” a system of public education that, in their view, will enable all students to “participate meaningfully in the economic, civic, and social activities of our society”; and to maintain continuing jurisdiction until this goal has been met.

Procedural History

Petitioner filed the within action on November 10, 2014. The Respondents each filed preliminary objections. Specifically, the prior executive administration, through the Governor, the Pennsylvania Department of Education, the Acting Secretary of Education, and the State Board of Education jointly filed preliminary objections alleging that: (1) Petitioners’ claims presented a nonjusticiable political question; (2) Petitioners failed to state a claim for which relief may be granted because the system of public education is rationally related to legitimate government objections; (3) Petitioners’ claims are barred by sovereign immunity insofar as the petition seeks a mandatory injunction; and (4) Petitioners’ claims were barred by the separation of powers doctrine insofar as the petition sought to compel action by the General Assembly.¹

¹ Similarly, the Legislative Respondents filed preliminary objections alleging: (1) Petitioners’ claims presented a nonjusticiable political question; (2) Petitioners failed to state a claim under the Education Clause because the funding system served the rational basis of preserving local control over public education; and (3) Petitioners failed to state a claim upon which relief may be granted under the Equal Protection Clause.

On April 21, 2015, this Honorable Court sustained the Respondents' preliminary objection and held that the matter was a nonjusticiable political question. *William Penn Sch. Dist. V. Pa. Dep't of Educ.*, 114 A.3d 456 & n. 15 (Pa. Cmwlth. 2015) (*en banc*). The Court, therefore, dismissed Petitioners' claims without reaching a decision on the Respondents' remaining preliminary objections.

Following appeal to the Supreme Court by the Petitioners, the Supreme Court reversed and remanded the order of this Court. The Supreme Court held that both the Petitioners' Education Clause claim and the Equal Protection claim are justiciable.

In the interim, in support of Governor Wolf's commitment to ensuring that every child, regardless of zip code, has access to a high-quality education, Governor Wolf and the General Assembly worked together to enact new legislation in 2016 that changed Pennsylvania public school funding scheme. Among other things, Act 35 of 2016, P.L. 252, No. 35 (June 1, 2016), 24 P.S. § 25-2502.53 (hereafter "Act 35"), provides for allocation of a dedicated portion of state funds pursuant to dynamic, student-based factors, including the number of children in the district who live in poverty. This new legislation was signed into law by Governor Wolf on June 1, 2016, and became effective on July 1, 2016. However, the work to increase funding for public schools is not over. Governor Wolf strongly believes in the need

for increased funding for Pennsylvania public schools and continues to fight for additional appropriations for public education.

Upon remand, this Court set a deadline for Respondents' to Answer the Petition for Review. Thereafter, Speaker Turzai moved to stay the Answer deadline and to permit supplemental briefing on the Respondents' remaining Preliminary Objections. Additionally, Respondent Scarnati, President *pro tempore* of the Pennsylvania Senate, moved to dismiss the case as moot.² This Court stayed the deadline to respond to the Petition until a ruling upon the Application to Dismiss for Mootness and the Respondents' remaining preliminary objections are decided. The Court ordered that all briefs supplementing the Respondents' remaining preliminary objections must be filed by January 25, 2017.

² Respondent Senator Scarnati argues that Act 35, which established a new school funding formula that applied to the 2015-16 school year and school years thereafter has mooted the Petitioners' claims. (Scarnati App. to Dismiss, pg. 3). The Executive Respondents do not agree that all of Petitioners' claims have been mooted by Act 35. In fact, the Supreme Court has previously addressed the argument of mootness in this case and clearly stated that even if the particular claims were technically mooted by the passage of Act 35, the Petitioners would have "a compelling argument" to meet the exception to mootness "... that the issues as stated are of importance to the public interest and 'capable of repetition yet evading review.'" *See William Penn Sch. Dist. v. Pa. Dep't of Educ.*, 170 A.3d 414, 433 (Pa. 2017). However, the significant passage of time since Petitioners filed their Petition has rendered a great number of their factual averments stale and dated. Should the Petitioners amend their Petition to update these allegations as suggested by the Supreme Court, this matter could be made current. *Id.* at p. 21, n. 24.

The Executive Respondents have carefully and deliberately reviewed the preliminary objections that were filed and briefed before Governor Wolf took office on January 20, 2015. Of those objections, it appears clear that the all but the Executive Respondents' preliminary objection asserting sovereign immunity have been foreclosed by the Supreme Court's holding in this matter on appeal. Accordingly, the Executive Respondents abandon their previously filed preliminary objections.³

Statement of Facts

The system of public education established by the General Assembly has many components, of which funding is only one. *See generally* Public School Code of 1949, 24 P.S. § 1-101, *et seq.* At the state level, the General Assembly has created the Department of Education and the State Board of Education, 71 P.S. §§ 61-62; 24 P.S. §§ 26-2601-B, 26-2602-B, and has prescribed their powers and duties. 71 P.S. § 352; 24 P.S. § 26-2603-B. At the local level, the General Assembly has created a statewide network of 500 school districts, which have the primary responsibility for providing education to children; comprehensive legislation defines the school districts' structures, powers and duties. *See* 24 P.S. §§ 2-201 to 2-298. Other laws

³ Sovereign immunity may only be waived by the General Assembly. 1 Pa.C.S. § 2310. As Petitioners may ultimately seek relief as to which the Executive Respondents are immune, Executive Respondents reserve the right to continue to assert the defense of Sovereign Immunity through the filing of New Matter and thereafter.

govern school buildings and lands, *id.*, §§ 7-701 to 7-791; books, supplies and equipment, *id.* §§ 8-801 to 8-810; special education and intermediate units, *id.*, §§ 9-951 to 9-974; certification and employment of teachers and other professionals, *id.*, §§ 9-951 to 9-974; certification and employment of teachers and other professionals, *id.* §§ 11-1101 to 12-1268; student attendance, *id.* §§ 13-1301 to 13-1345; school health, *id.*, §§ 14-1401 to 14-1422; and curriculum. *Id.*, §§ 15-1501 to 15-1547.

Each school district is governed by a board of school directors that has broad powers to manage both the academic and fiscal affairs of the district. The boards of school directors may, among other things, establish schools, incur debt, issue bonds, condemn land, and set salary and benefit levels for employees. *See* 24 P.S. §§ 3-301 to 5-5427. The school directors are in turn accountable to the voters of their school districts, by whom they are elected.

Public education is paid for by a combination of local and state funds. *See* Pet. For Review, ¶¶ 263-65. The Legislature has given school districts (except for the Philadelphia School District) their own taxing authority; local educational funds are raised mainly through property taxes, but also through taxes on income and other local taxes. The Commonwealth, for its part, provides money to school districts not just for instruction, but also for a variety of specific purposes such as special education, vocational education, construction and retirement. *See, e.g.*, Act 1A of

2014, § 213 (appropriating, inter alia, \$5.5 billion for basic education funding, \$547 million for pupil transportation, \$1 billion for special education, and \$1.1 billion for retirement).

These state funds, however, are not distributed evenly among school districts. Rather, as of the time Petitioners' Petition was filed, state funds were distributed through a statutory formula that varied in its details from year to year, but which took into account, for each school district, the size and age of its student population, the number of low-income students, its local tax effort, its population density, and other factors. In particular, the former statutory scheme factored in the relative "wealth" – that is, the amount of property and income available for taxation – of each school district. This was expressed primarily through each district's "aid ration." Less "wealthy" districts had a higher aid ration, and received more money per student, than did more "wealthy" districts. *See* 24 P.S. §§ 25-2501(14) and (14.1).

ARGUMENT

Within their Petition, Petitioners seek injunctive and declaratory relief, including a mandatory injunction “compelling” the Respondents to “establish, fund and maintain” a system of public education that, in their view, will enable all students to “participate meaningfully in the economic, civic, and social activities of our society”; and to maintain continuing jurisdiction until this goal has been met.

There is no dispute that all Pennsylvania public school students deserve a high-quality education and access to educational resources necessary to be successful in the 21st century. There is also no dispute that Governor Wolf has vigorously, aggressively and thoroughly supported education, has secured substantial additional funding for poor school districts, and has pushed public education to the forefront of public discourse as demonstrated by Act 35.

In line with the Governor’s goal to support access to high quality education for all public school students, the Executive Respondents have carefully reviewed the preliminary objections and the brief in support filed prior to Governor Wolf’s swearing in on January 20, 2015, in conjunction with the Supreme Court’s decision in this case. The Executive Respondents have concluded that those preliminary objections are largely foreclosed by the Supreme Court’s holding.

For example, the respondents’ preliminary objections for failure to state a claim regarding the Petitioners’ Education Clause and Equal Protection Clause

claims were squarely discussed by the Supreme Court. The Supreme Court expressly abandoned the legal conclusions in *Danson* and *Marrero*, describing at length the “irreconcilable deficiencies in their [analytical] rigor, clarity, and consistency.” *William Penn Sch. Dist. v. Pa. Dep’t of Ed.*, 170 A.3d 414, 457 (Pa. 2017). The Supreme Court went on to foreclose the argument that preservation of local control over public education is a constitutionally reasonable basis for the inadequacies of Pennsylvania’s funding system and stated that “recitations of the need for local control cannot relieve the General Assembly of its exclusive obligation under the Education Clause.” *William Penn*, 170 A.3d at 442, n. 40.

Similarly, with regards to the Petitioners’ equal protection claim, the Court “[found] colorable Petitioners’ allegation that the General Assembly imposes a classification whereunder distribution of state funds results in widespread deprivations in economically disadvantaged districts of the resources necessary to attain a constitutionally adequate education.” *Id.* at 464.

Accordingly, the Executive Respondents do not see any legal justification with which to support continuing to stand upon these preliminary objections previously asserted; therefore, they are abandoned at this juncture.⁴

⁴ The Executive Respondents are left only with the previously argued and briefed preliminary objection pursuant to the doctrine of sovereign immunity. The Commonwealth and its agencies, officials, and employees acting within the scope of their duties are statutorily immune from suit pursuant to the doctrine of sovereign immunity. *See* 1. Pa.C.S. § 2310. However, as this defense bars “suits which seek to

CONCLUSION

WHEREFORE, the Executive Respondents respectfully request that this Court overrule the respondents' remaining preliminary objections as they are foreclosed by the Supreme Court's opinion and enter an order setting the deadline for answers to the Petition for Review so that the parties may swiftly undertake discovery and move this matter toward a resolution.

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compel affirmative action on the part of state officials,” Fawber v. Cohen, 532 A.2d 429, 433-34 (Pa. 1987)(emphasis in original)(quoting Philadelphia Life Ins. Co., v. Comm., 190 A.2d 111, 114 (1963), and Petitioners’ demands are more expansive, it is not fully dispositive of Plaintiff’s claims. Accordingly, it is more suited for pleading in New Matter and will be preserved until such time as an answer to the Petition for Review is due.

CERTIFICATE OF SERVICE

I, M. Abbegeael Giunta, hereby certify that on this 25th day of January 2018, the foregoing **Supplemental Brief on Executive Branch Respondents' Preliminary Objections to the Petition for Review** has been served upon counsel in the manner indicated below, which service satisfies the requirements of Pennsylvania Rule of Appellate Procedure 121:

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