

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

William Penn School District; :  
Panther Valley School District; :  
The School District of Lancaster; :  
Greater Johnstown School District; :  
Wilkes-Barre Area School District; :  
Shenandoah Valley School District; :  
Jamella and Bryant Miller, parents of :  
K.M., a minor; Sheila Armstrong, :  
Parent of S.A., minor; Tyesha :  
Strickland, parent of E.T., minor; :  
Angel Martinez, parent of A.M., :  
minor; Barbara Nemeth, parent of :  
C.M., minor; Tracey Hughes, parent :  
of P.M.H., minor; Pennsylvania :  
Association of Rural and Small Schools; :  
and The National Association for the :  
Advancement of Colored :  
People—Pennsylvania State Conference, :  
Petitioners :

v. :

No. 587 M.D. 2014

Pennsylvania Department of Education; :  
Joseph B. Scarnati III, in his official :  
capacity as President Pro-Tempore of :  
the Pennsylvania Senate; Michael C. :  
Turzai, in his official capacity as the :  
Speaker of the Pennsylvania House of :  
Representatives; Tom W. Wolf, :  
in his official capacity as the Governor :  
of the Commonwealth of Pennsylvania; :  
Pennsylvania State Board of Education; :  
and Pedro Rivera, in his official :  
capacity as the Acting Secretary of :  
Education, :  
Respondents :

## ORDER

**AND NOW**, this 20<sup>th</sup> day of August, 2018, upon consideration of Petitioners' Opposition to Respondent Scarnati's Mootness Application, and responses thereto, it is **ORDERED** and **DECREED** that the Application for Dismissal filed by Respondent Joseph B. Scarnati III, President Pro-Tempore of the Pennsylvania Senate, is **DENIED**, **without prejudice** to renew.

Respondents shall file answers to the petition for review within 30 days of the date of this Order.

### STATEMENT OF REASONS

This matter was most recently before this Court in our original jurisdiction for consideration of preliminary objections and Respondent Scarnati's application for dismissal based on mootness. At that time, we addressed the mootness issue as follows:

In 2016, [the statute popularly known as] Act 35<sup>[1]</sup> changed the statutory scheme for funding Pennsylvania's public education system. Senator Scarnati contends that the changes are significant and that Petitioners' constitutional challenges to [the statute popularly known as] Act 61<sup>[2]</sup> are moot in light of this intervening change in the law.

In opposition, Petitioners contest the significance of the funding changes wrought by Act 35. In addition to the factual contest, Petitioners largely rely on our Supreme Court's discussion of mootness in William Penn School District v. Pennsylvania Department of Education, 170 A.3d 414 (Pa. 2017) (William Penn II). That discussion,

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<sup>1</sup> Act of June 1, 2016, P.L. 252, No. 35, §1, 24 P.S. §25-2502.53.

<sup>2</sup> Act of July 9, 2008, P.L. 846, No. 61, amending Act of Mar. 10, 1949, P.L. 30, No. 14, 24 P.S. §§1-101-25-2599.2.

while not essential to its decision in William Penn II, offers some indication of our Supreme Court's views on this issue. Observing that the nature of the state's education funding formula can change any time the legislature chooses, our Supreme Court stated: 'Changes in the formula do not render the questions presented moot ....' Id. at 435. Further, the Supreme Court noted that even if the passage of Act 35 mooted Petitioners' claims, 'Petitioners would have a compelling argument ... to proceed to decision on the basis that the issues as stated are of importance to the public interest and "capable of repetition yet evading review."' Id. at 435 n.34 (citation omitted). Our Supreme Court explained: 'At the inception of any action such as the one presented – the public importance of which cannot be disputed – there inheres the risk that the General Assembly will move the goalposts by enacting new legislation ....' Id.

Unfortunately, neither the petition for review nor the record affords this Court a basis to determine the possible impact of Act 35 on the causes of action currently pled by Petitioners. In addition, we are mindful of our Supreme Court's comments on mootness in William Penn II. Accordingly, at this juncture we cannot say as a matter of law that the abrogation of the statutory funding scheme challenged by Petitioners renders their challenges moot. We will therefore defer action on the application for dismissal pending further supplementation of the pleadings or the record by the parties in accordance with the attached order.

William Penn Sch. Dist. v. Pa. Dep't of Educ. (Pa. Cmwlth., No. 587 M.D. 2014, filed May 7, 2018) (en banc), slip op. at 6-7, 2018 WL 2090329 at \*3 (footnote omitted). Further, we ordered in pertinent part:

1. This Court will defer ruling on the application for dismissal for mootness, pending further development of the issue by the parties. Petitioners may file any amended pleading, shall submit factual support under oath or penalty of law for their argument against mootness, and may file further written argument, within 60 days of the date of this Order. Respondents may file

any responsive materials within 90 days of the date of this Order. Thereafter, any party may file a written application for decision of this issue by the Court.

Id., Order at 1, 2018 WL 2090329 at \*6.

Since that time, Petitioners filed a 112-page Opposition to Respondent Scarnati's Mootness Application. It consists largely of affidavits explaining why the public school funding scheme is still inadequate and unconstitutional. Most Respondents replied or filed additional briefs.

Clearly, a factual dispute about the significance and adequacy of the funding changes wrought by the passage of Act 35 persists. In addition, it is unclear whether the preceding statute has been sufficiently altered by Act 35 so as to present a substantially different controversy. Further, none of the Respondents address our Supreme Court's guidance in William Penn II. For these reasons, we conclude that at this early procedural juncture, with the pleadings not yet closed, there are sufficient legal and factual issues that remain in dispute, such that this Court cannot find Petitioners' constitutional claims moot. See Brouillette v. Wolf (Pa. Cmwlth., No. 410 M.D. 2017, filed December 28, 2017) (single judge op.) (unreported) (rejecting joint motion to dismiss constitutional challenge for mootness advanced by various Respondents, including Respondent Scarnati, because of legal and factual issues remaining in dispute).

Certified from the Record

AUG 21 2018

And Order Exit

  
ROBERT SIMPSON, Judge

President Judge Leavitt and Judges Brobson, Covey, and Fizzano Cannon did not participate in the decision in this case.