IN THE COMMONWEALTH COURT OF PENNSYLVANIA

WILLIAM PENN SCHOOL DISTRICT, *et al.*,	:	
	:	
Petitioners,	:	
	:	
v.	:	Docket No. 587 M.D. 2014
	:	
PENNSYLVANIA DEPARTMENT OF EDUCATION, *et al.*,	:	
	:	
Respondents.	:	

REPLY TO PETITIONERS' OPPOSITION TO APPLICATION IN THE NATURE OF A MOTION TO DISMISS FOR MOOTNESS

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INTRODUCTION

In their brief in opposition to Senator Scarnati's Application in the Nature of a Motion to Dismiss for Mootness ("Application"), Petitioners devote most of their attention to making assertions that Act 35 of 2016, 24 P.S. § 25-2502.53, did not "solve" the "funding problems" that, in their Petition for Review ("Petition"), they allege in connection with Pennsylvania's "school funding arrangement" that was in place in 2014. In other words, Petitioners express their belief that Act 35 is unconstitutional in its effects for essentially the same reasons that they believe the 2014 arrangement was unconstitutional in its effects. But what they fail to appreciate is that Act 35 is ***different*** from and ***replaced*** the 2014 arrangement. In fact, it was designed to address a number of the issues that Petitioners raise in their Petition. And yet, Petitioners are challenging the 2014 arrangement alone. They have refused to amend their Petition to include a challenge to Act 35, even though the Court expressly invited them to do so. Because Petitioners persist in challenging a statutory scheme that is no longer operative, this case is moot. And, because none of the exceptions to the mootness doctrine apply here, this Court should dismiss the case.

RELEVANT PROCEDURAL BACKGROUND

On December 27, 2017, Senator Scarnati filed the Application and a brief in support of the Application, both of which he incorporates into this brief by

reference. In those filings, Senator Scarnati explains in detail why, in light of the enactment of Act 35 of 2016 (or "Act 35"), P.L. 252, No. 35 (June 1, 2016), 24 P.S. § 25-2502.53, this case is moot. On February 15, 2018, Petitioners filed a brief in which they responded to the Application and replied to the supplemental briefs that Respondents had filed in support of their then-remaining preliminary objections to the Petition for Review.

On May 7, 2018, the Court issued an order in which it overruled "without prejudice, preliminary objections concerning the nature of the constitutional rights at issue and the corresponding level of judicial scrutiny to be applied." It also deferred ruling on the Application. In doing so, it stated that "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." It also stated that "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."

Instead of "fil[ing] any amended pleading" in which they replace their challenge to Pennsylvania's now-defunct 2014 school funding arrangement with a challenge to Act 35, Petitioners, on July 6, 2018, filed a brief in opposition to the Application ("Petitioners' Brief"), along with a collection of affidavits. In their Brief, Petitioners insist that, despite the enactment of Act 35, this case is not moot.

Senator Scarnati now submits this brief in reply to Petitioners' Brief.

ARGUMENT

As Senator Scarnati explains in his opening brief in support of the Application, this case is moot because of an intervening change in the law—namely, the enactment of Act 35—and the Court should therefore dismiss it. *See* Br. Supp. Appl. in Nature of Mot. Dismiss for Mootness at 6-16 (Dec. 27, 2017).

A. The Mootness Standard

"Under the mootness doctrine a case may be dismissed for mootness at any time by a court, because generally, an actual case or controversy must exist at all stages of the judicial or administrative process." *Pa. Liquor Control Bd. v. Dentici*, 542 A.2d 229, 230 (Pa. Cmwlth. 1988). "The problems arise from events occurring after the lawsuit has gotten under way—changes in the facts or in the law—which allegedly deprive the litigant of the necessary stake in the outcome." *In re Gross*, 382 A.2d 116, 119 (Pa. 1978). "The mootness doctrine requires that an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed." *Id.* (internal quotation marks omitted). An issue can become moot "as a result of an intervening change in the facts of the case" or "due to an intervening change in the applicable law." *Id*. at 119-20.

There are exceptions to the mootness doctrine, which may come into play if "(1) the conduct complained of is capable of repetition yet evading review, or (2)

involves questions important to the public interest, or (3) will cause one party to suffer some detriment without the Court's decision." *Cytemp Specialty Steel Div., Cyclops Corp. v. Pa. Pub. Util. Comm'n*, 563 A.2d 593, 596 (Pa. Cmwlth. 1989). "Notwithstanding these exceptions," this Court has explained, "constitutional questions are not to be dealt with abstractly." *Costa v. Cortes*, 142 A.3d 1004, 1017 (Pa. Cmwlth. 2016) (internal quotation marks and brackets omitted). "This Court, therefore, should be even ***more reluctant*** to decide moot questions which raise constitutional issues." *Id*. (emphasis added). "Instead, we prefer to apply the well-settled principle[] that courts should not decide a constitutional question ***unless absolutely required*** to do so." *Id*. (emphasis added) (internal quotation marks and brackets omitted).

B. This Case is Moot

This case has become moot "due to an intervening change in the applicable law." *In re Gross*, 382 A.2d at 120.

As Senator Scarnati explains in his opening brief in support of the Application, the Petition for Review contains two constitutional claims. Petition at ¶¶ 300-311. Petitioners assert, in particular, that the Pennsylvania "school funding arrangement" that was in place in 2014, when they filed the Petition, violated the Education Clause (count one) by failing to ensure that students in lower-wealth school districts had access to sufficient resources to obtain an adequate education.

See id. at ¶¶ 304 & 306; *see also id.* at ¶ 305 (noting that, under the Education Clause, Petitioners were challenging "[t]he current levels and allocation of public-school funding"). And they assert that the 2014 school funding arrangement violated equal protection principles (count two) by denying students in lower-wealth school districts the same opportunity to obtain an adequate education as students in higher-wealth school districts. *See id*. at ¶¶ 307-311; *see also id.* at ¶ 310 (alleging that, by adopting then-current "school funding arrangement," Respondents violated equal protection principles). They criticize the 2014 school funding arrangement because it did not "consider" various factors that, in their view, it should have considered. *Id*. at ¶ 291. Petitioners, in effect, were challenging the amount of funding and the manner of funding.

The 2014 school funding arrangement, however, is ***no longer in effect***. On June 1, 2016, the General Assembly enacted Act 35, which established a new and different school funding formula that applies to the 2015-2016 school year and each school year afterwards. *See* 24 P.S. § 25-2502.53(b). The new funding formula, as embodied in Act 35, provides that "the Commonwealth shall pay to each school district a basic education funding allocation" that consists of "[a]n amount equal to the school district's basic education funding allocation for the 2013-2014 school year" along with a "student-based allocation[.]" 24 P.S. § 25-2502.53(b)(1) & (2). The student-based allocation takes into account numerous

student-focused and school-district-centric factors, including, among others, the district's wealth, current tax effort, size, population density, number of children who live in poverty, number of children who are English language learners, and number of children who are enrolled in charter schools. 24 P.S. § 25-2502.53(b)(2) & (d) (definitions). Therefore, Act 35 supplanted the "funding arrangement" that was in place when Petitioners commenced this case.

In other words, by the express terms of their Petition, Petitioners are challenging the 2014 school funding arrangement, which, they allege, was one of "thirteen one-time formulas" that the Commonwealth had used since 2008 to allocate state funding among school districts. Petition at ¶ 293. But that legal regime is gone. Now, under Act 35, as explained above, the Commonwealth is required each year to provide each school district with (1) "[a]n amount equal to the school district's basic education funding allocation for the 2013-2014 school year" and (2) the "student-based allocation[.]" 24 P.S. § 25-2502.53(b)(1) & (2). Instead of being a "one-time formula," this formula applies to the 2015-2016 school year and each school year afterwards. *See* 24 P.S. § 25-2502.53(b) ("For the 2015-2016 school year and each school year thereafter…."). And, with its requirement for the Commonwealth to provide each school district with two different funding allocations, including the "student-based allocation," it differs

from the 2014 school funding arrangement. With the enactment of Act 35, the amount of funding and the manner of funding have both changed.

Data from the Pennsylvania Department of Education ("Department") show how Act 35 has functioned in practice.[1] The basic education funding that the Commonwealth has provided under the student-based allocation (or "SBA") has risen to $550,000,000 for the 2018-2019 fiscal year. The level of overall basic education funding for Pennsylvania school districts has risen by approximately 9% since the 2014-2015 fiscal year. Even larger increases in basic education funding are evident in the student-based allocation funds that the Commonwealth has provided to the School District Petitioners. The following chart shows the student-based allocation funds that the School District Petitioners have received, or will receive, under Act 35 and the percentage of basic education funding that the Commonwealth has distributed to them as student-based allocation funds. As the chart shows, the student-based allocation represents between approximately 9.9%

[1] *See* Pennsylvania Department of Education, Education Budget (last visited August 2, 2018) https://www.education.pa.gov/Teachers%20-%20Administrators/School%20Finances/Education%20Budget/Pages/default.aspx (showing 2018-19 Enacted Basic Education Funding Budget); Pennsylvania Department of Education, Historical Subsidy and Grant Information (last visited August 2, 2018), https://www.education.pa.gov/Teachers%20-%20Administrators/School%20Finances/Finances/Historical%20Files/Pages/default.aspx (showing 2015-16, 2016-17 and 2017-18 Basic Education Funding Budgets).

and 17.7% of the basic education funding that Petitioner School Districts have received:

School District	**FY2015-16**	**FY2016-17**	**FY2017-18**	**FY2018-19* (estimated)**
William Penn SBA	$670,043	$1,561,530	$1,854,141	$2,281,713
William Penn SBA %	3.15%	7.04%	8.25%	9.97%
Panther Valley SBA	$316,098	$731,657	$917,161	$1,093,403
Panther Valley SBA %	3.96%	8.71%	10.69%	12.48%
Lancaster SBA	$2,637,903	$6,091,153	$7,720,209	$8,765,086
Lancaster SBA %	4.67%	10.17%	12.55%	14.01%
Greater Johnstown SBA	$573,081	$1,327,950	$1,690,880	$2,417,352
Greater Johnstown SBA %	3.31%	7.34%	9.16%	12.60%
Wilkes Barre SBA	$1,355,313	$3,108,042	$4,007,731	$5,154,573
Wilkes Barre SBA %	5.38%	11.53%	14.38%	17.77%
Shenandoah Valley SBA	$251,252	$580,973	$685,696	$1,061,254
Shenandoah Valley SBA %	3.65%	8.05%	9.36%	13.78%

These data demonstrate that, contrary to what Petitioners repeatedly claim, Act 35 and student-based allocation funding are not illusory or miniscule. In fact,

a significant portion of the Petitioner School Districts' state funding is comprised of student-based allocation funds. Moreover, in every year since the enactment of Act 35, student-based allocation funding has grown, making it a more substantial portion of state funding with time.

All told, Petitioners are challenging statutes (namely, the 2014 school funding statutes) that no longer have any force or effect. Act 35 is different from and has superseded them. This case is therefore moot. *See, e.g.*, *In re Gross*, 382 A.2d at 120.

1. By definition, Petitioners are challenging statutes

Faced with these points, Petitioners argue that their "Education Clause claim is not based on a specific statute or regulation. Rather, it is based on allegations that Respondents are not providing sufficient funds to maintain a thorough and efficient system of public education, as required by the Education Clause." Petitioners' Brief at 8. This argument is misguided. It is *only* through statutes that the Commonwealth "provid[es]…funds" to school districts. *See, e.g.,* Pa. Const. art. III, § 24 ("[n]o money shall be paid out of the treasury, except on appropriations made by law"). So, by asserting that the Commonwealth is "not providing sufficient funds" to school districts, Petitioners are necessarily challenging statutes (namely, the 2014 school funding statutes).

For the same reasons, Petitioners are mistaken in contending that, "[l]ike their Education Clause claim, Petitioners' equal protection claim is not based on a single statute or regulation. Rather it is based on the General Assembly's adoption of an irrational and inequitable school funding scheme that creates vast disparities between high-wealth and low-wealth districts[.]" Petitioners' Brief at 18. The Petitioners conjure up a "school funding scheme" as something distinct from the statute that created it. Again, it is only through statutes that the General Assembly adopts "school funding scheme[s]." Pa. Const. art. III, § 24; *see also In re Marshall*, 69 A.2d 619, 626 (Pa. 1949) ("Legislative power is the power to make, alter, and repeal laws.") (internal quotation marks omitted). So, by asserting that the General Assembly has adopted "an irrational and inequitable school funding scheme," Petitioners are necessarily challenging statutes—specifically, the 2014 school funding statutes.

2. Petitioners' belief that Act 35 is unconstitutional does not mean that their challenge to Pennsylvania's 2014 school funding arrangement is not moot

Perhaps appreciating that they are challenging statutes, Petitioners also argue at length—but wrongly—that this case is not moot because Act 35 did not "solve" the "funding problems" that, in their Petition for Review, they allege in connection with Pennsylvania's 2014 school funding arrangement. Petitioners' Brief at 1. With regard to their Education Clause claim, for example, they contend that "Act

35 has not in any way addressed the inadequacy of Pennsylvania's school funding scheme." *Id*. at 11. They allege, more specifically, that Act 35 "did nothing to increase statewide education funding levels" and, likewise, "did nothing to ensure that school districts receive funding sufficient to meet their *actual needs*." *Id*. at 9 (emphasis in original). Petitioners then go on for pages making allegations and references to affidavits that are meant to show that, under Act 35, school districts "still lack the resources necessary to provide a thorough and efficient education." *Id*. at 11-18.[2]

Petitioners take the same approach with regard to their equal protection claim. They insist that "Act 35 has not addressed the vast inequality in Pennsylvania's school funding scheme and children continue to be deprived of an equal opportunity to obtain an adequate education." *Id*. at 22. And then they make a variety of allegations and references to an affidavit that are meant to support this contention. *Id*. at 20-22.

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[2] None of these allegations and references are contained in the Petition and, in this context, none of them may be taken as true. Petitioners cannot use a brief to amend or supplement the allegations in the Petition. *See, e.g.*, *Consumer Party of Pa. v. Commonwealth*, 507 A.2d 323, 336 (Pa. 1986) (rejecting appellants' contention that "they 'changed' their pleadings to allege a violation of Article II, section 8 in their summary judgment papers[,]" and concluding that the Article II, section 8 issue was not properly before the court because "[t]here is no evidence in the record . . . that [appellants] sought to amend their complaint or their motion for summary judgment.") (overruled on other grounds by *Pennsylvanians Against Gambling Expansion Fund, Inc. v. Commonwealth*, 877 A.2d 383, 408 (Pa. 2005)).

But what Petitioners fail to appreciate is that, for purposes of the mootness analysis, what matters is *not* whether they believe that Act 35 is unconstitutional in its effects for essentially the same reasons that they believe the 2014 school funding arrangement was unconstitutional in its effects. Instead, what matters is that Act 35 is materially *different* from and *replaced* the 2014 funding arrangement, as explained above. And, in the Petition, the Petitioners are challenging the 2014 arrangement *alone*, not Act 35. Under these circumstances, this case is moot.

As Senator Scarnati explains in his opening brief, the fact that this case is moot is crystallized by focusing on the "factors" that Petitioners claim the prior school funding arrangement should have, but failed to, consider. They allege that the 2014 arrangement did not consider, for example, the "additional expense" of educating economically-disadvantaged students and English-language learners and the differences among school districts with regard to things like size, location, population density, and costs of living. Petition at ¶ 291. And yet, in addition to requiring an annual payment to each school district in an amount equal to the "school district's basic education funding allocation for the 2013-2014 school year," 24 P.S. § 25-2502.53(b)(1), the Act 35 funding formula *expressly considers* all of those factors (and more). *See* 24 P.S. § 25-2502.53(b)(2) & (d) (definitions). Those factors go into determining the "student-based allocation" that the

Commonwealth must pay to each school district each year. *See id.* It is therefore plain that Petitioners are challenging a legal state of affairs that no longer exists and one that, by the same token, has been replaced by a statute (Act 35) that is markedly different from it.

Petitioners, though, contend that "[i]ntervening legislation like Act 35 cannot render a claim moot if it does not actually address the underlying problem[.]" Petitioners' Brief at 10. They claim that the legislation must "*completely* resolve[] the underlying issue." *Id*. (emphasis in original). They are mistaken. There is nothing in Pennsylvania law to suggest that, when one statute supersedes a different statute, a challenge to the former statute is not moot if the challenger claims the new statute causes the same "problem" as the old one.[3]

[3] Petitioners suggest that two cases support this proposition, *see* Petitioners' Brief at 10, but neither of them actually does so. In *Conti v. Department of Labor and Industry*, 175 A.2d 56 (Pa. 1961), the question was whether an administrative order that set minimum wages for certain employees violated the Minimum Wage Law of 1937. The court concluded that the enactment of the Minimum Wage Act of 1961 mooted the question because that statute *superseded* the order by setting minimum wages for the same employees. *Id.* at 57. The court did not suggest that a challenge to a superseded statute is not moot if the challenger asserts that the superseding statute causes the same "problem" as the old one. Likewise, in *Stilp v. Commonwealth*, 905 A.2d 918 (Pa. 2006), this Court concluded that, because Act 72 of 2005 had repealed Act 44 of 2005, a constitutional challenge to the latter statute was moot. *Id.* at 926. On appeal, our Supreme Court determined that Act 72 of 2005 was itself partially unconstitutional and that, therefore, it had failed to fully repeal Act 44 of 2005. The Supreme Court then concluded that, because "part of Act 44 [of 2005], at least presumptively, is *still operative*[,]" the challenge to that statute was not moot. *Id*. at 951 (emphasis added). Here, by contrast, the 2014 school funding arrangement is no longer operative.

Rather, because the old statute no longer has any force or effect, the challenge is moot.

This point is illustrated by this Court's decision in *Commonwealth v. Packer Township*, 60 A.3d 189 (Pa. Cmwlth. 2012). There, the Pennsylvania Attorney General challenged a township's ordinance on grounds that two statewide statutes preempted it. During the course of the litigation, the Township repealed the ordinance. This Court observed that "because the Ordinance that [was] challenged has since been repealed, the petition for review filed by the Attorney General is moot." *Id*. at 192. The Court later emphasized that it "cannot review a non-existent ordinance." *Id*. at 193.

By the same logic, this Court cannot review and pass upon the validity of the 2014 Pennsylvania school funding arrangement. Act 35 has fully supplanted it and the Court "cannot review a non-existent" statute. This point is particularly pronounced here because Petitioners seek only forward-looking injunctive and declaratory relief. A declaration or injunction regarding a superseded statute would be meaningless.

Additional support for this conclusion is found in the U.S. Supreme Court's decision in *Diffenderfer v. Central Baptist Church of Miami, Florida, Inc.*, 404 U.S. 412 (1972). There, the plaintiffs challenged, on First Amendment grounds, a Florida statute that exempted from taxation certain church property that was used,

in part, as a commercial parking lot. After the Supreme Court took jurisdiction of the case, the Florida legislature repealed the statute and replaced it with another one, which exempted from taxation only church property that was used "predominately" for religious purposes. The Supreme Court concluded that the case was moot, stating that the "only relief sought in the complaint was a declaratory judgment that the now repealed [statute] is unconstitutional as applied to a church parking lot used for commercial purposes and an injunction against its application to said lot. This relief is . . . inappropriate now that the statute has been repealed." *Id*. at 414-15. Recognizing that the plaintiffs might wish to challenge the new statute, the Court declined to order a dismissal of the case and instead vacated the trial court's judgment and "remand[ed] the case to the District Court with leave to the appellants to amend their pleadings." *Id*. at 415.

As another federal court therefore later observed, citing *Diffenderfer*,

> A case is moot even when a challenged statute is replaced with new legislation that, while not obviously or completely remedying the alleged infirmity in the original act, is more narrowly drawn. The new law ultimately may suffer from the same legal defect as the old, but the statute may be sufficiently altered so as to present a substantially different controversy.

Trewhella v. City of Lake Geneva, 249 F.Supp.2d 1057, 1061-62 (E.D. Wis. 2003).

These principles apply with equal force here. Act 35 is different from and replaced the 2014 school funding arrangement that Petitioners are challenging in their Petition for Review. And, while Petitioners believe that Act 35 is

unconstitutional in its effects for essentially the same reasons that they believe the 2014 arrangement was unconstitutional in its effects, the controlling legal regime, as explained above in Argument Part B, was nevertheless "sufficiently altered so as to present a substantially different controversy." This case is therefore moot.

C. None of the Exceptions to the Mootness Doctrine Apply Here

Invoking the "great public importance" exception to the mootness doctrine, Petitioners say that, even if this case is moot, "[t]here can be no question that the issue of public education funding is of great public interest." Petitioners' Brief at 24. But, in taking this approach, Petitioners fail to appreciate that "[a] controlling factor in determining whether the moot questions may be properly reviewed under the great public importance exception is whether 'the legislature obviously recognized the significance of [such] questions.'" *Harris v. Rendell*, 982 A.2d 1030, 1037 (Pa. Cmwlth. 2009) (quoting *In re Gross*, 382 A.2d at 123). If "the statute 'deals squarely with the issues,' the case does not fall within the great public importance exception." *Id*. Here, as explained above, Act 35 deals with the issues that Petitioners raise in their Petition. The Act 35 funding formula, for example, considers the factors that, according to Petitioners, the prior school funding arrangement should have, but failed to, consider. Act 35 attempts to address the concerns that Petitioners raise (among others). "In view of the new comprehensive statutory scheme," therefore, "there is no longer a need to assess

the validity of the former scheme." *In re Gross*, 382 A.2d at 123; *see also Packer Twp.*, 60 A.3d at 193 ("Similarly, in this case, because the Ordinance is no longer in effect, there is no need to assess its validity.").

If Petitioners believe that Act 35, like the prior school funding arrangement, violates the Education Clause and equal protection principles, they are not precluded from challenging it on those grounds. They may allege – in a new case[4] – that Act 35 is unconstitutional even though, in addition to requiring the Commonwealth to pay each school district an annual amount equal to the "school district's basic education funding allocation for the 2013-2014 school year," 24 P.S. § 25-2502.53(b)(1), it expressly considers the factors that, they say, the prior school funding arrangement should have considered. *See* 24 P.S. § 25-2502.53(b)(2) & (d) (definitions). But they may not continue to pretend that their challenge to the 2014 school funding regime is also a challenge to Act 35.

Petitioners separately contend that their claims are "quintessentially capable of repetition yet evading review." Petitioners' Brief at 24. They state, in this regard, that "Respondents are effectively asking the Court to declare Petitioners' claims moot with the passage of *any* appropriations bill that makes even the *slightest* change to the education funding scheme, no matter how minimal the

[4] In its May 7, 2018 order, this Court gave Petitioners an opportunity to amend their Petition to include a challenge to Act 35. Petitioners declined to do so. This Court should therefore dismiss this action rather than giving Petitioners another opportunity to amend.

impact on funding levels or disparities and how significant the evidence of continuing harm." *Id*. (italics in original). Petitioners are mischaracterizing Senator Scarnati's position.[5]

The point here is that Act 35 is different from and fully replaced the 2014 school funding arrangement. It does not represent, in Petitioners' words, just "the slightest change[.]" Under Act 35, unlike the prior arrangement, the Commonwealth is required each year to provide each school district with (1) "[a]n amount equal to the school district's basic education funding allocation for the 2013-2014 school year" and (2) a "student-based allocation[,]" which takes into account the factors that, in Petitioners' view, the prior arrangement improperly failed to consider. *See* 24 P.S. § 25-2502.53(b)(1) & (2). This formula applies "[f]or the 2015-2016 school year and each school year thereafter." 24 P.S. § 25-2502.53(b). In total, the Commonwealth has directed $1.5 billion to Pennsylvania schools under the student-based allocation, as part of Basic Education Funding, between fiscal year 2015-2016 and fiscal year 2018-2019. The amount of student-based allocation funding has increased in every year since Act 35's enactment. And yet, Petitioners claim that it is not and will never be constitutionally sufficient. They say that Act 35 "enshrined the existing scheme's inadequacy and inequity in

[5] Petitioners also mistakenly conflate an annual appropriations act with the permanent, substantive formula that Act 35 establishes. The former will change from year to year. The latter has been the law since 2016 and must be presumed to continue in effect.

perpetuity." Petitioners' Brief at 2. And, similarly, they say that "Act 35 continues to allocate the vast majority of education funding in an arbitrary manner based on what school districts happened to receive during the 2013-14 school year, without regard to whether those funding levels are sufficient to provide their students with basic educational resources and services." *Id*. at 9-10.

Given that the Act 35 formula applies in perpetuity and that Petitioners believe that it will never be constitutionally sufficient, the claims at hand will not "evade review." Petitioners are free to file a new action in which they challenge Act 35.

Bearing in mind that "constitutional questions are not to be dealt with abstractly" and that "[t]his Court, therefore, should be even more reluctant to decide moot questions which raise constitutional issues," *Costa,* 142 A.3d at 1017 (internal quotation marks and brackets omitted), the Court should dismiss this case as moot. There is no reason for the Court to deviate from the "well-settled principles that courts should not decide a constitutional question unless absolutely required to do so." *Id*. (internal quotation marks and brackets omitted).

CONCLUSION

For the foregoing reasons and those set forth in Senator Scarnati's opening brief in support of the Application, this Court should grant the Application and dismiss this case as moot.

Respectfully submitted,

August 3, 2018

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