

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

WILLIAM PENN SCHOOL DISTRICT,
et al.,

NO. 587 MD 2014

Petitioners

v.

PENNSYLVANIA DEPARTMENT OF
EDUCATION, et al.,

Respondents

**RESPONDENT, SPEAKER MICHAEL C. TURZAI'S ANSWER IN
OPPOSITION TO PETITIONERS' APPLICATION TO SCHEDULE
STATUS CONFERENCE AND SET SCHEDULE FOR DISCOVERY AND
TRIAL**

Speaker of the House Michael C. Turzai (“**Speaker Turzai**”), by and through his undersigned counsel, Answers and Opposes the Petitioners’ Application to Schedule Status Conference and Set Schedule For Discovery and Trial (“**Application**”) as follows:

1. Admitted in part, denied in part. Admitted that Petitioners initiated this action in 2014. All other allegations of this paragraph refer to the Petitioners’ Petition for Review, filed in 2014, which is in writing speaks for itself. Speaker Turzai specifically denies that the General Assembly is violating its obligations under the Education Clause or the Equal Protection Clause.

2. Admitted in part, denied in part. Admitted that there were three oral arguments before this Court and the Pennsylvania Supreme Court. It is denied that the matter is “now ripe for discovery.” To the contrary, following the most recent oral argument, this Court issued a May 7, 2018 Order that granted 120 days for “limited discovery” confined to the issues of “the nature of the constitutional rights at issue and the corresponding level of judicial scrutiny to be applied....” The May 7, 2018 Order further stated that following the 120 day period of limited discovery, which has now been completed, “any party may then file an application for partial summary relief, also confined to those issues.” The current Petition essentially seeks reconsideration of the May 7, 2018 Order, four months after it was issued. Further, permitting open-ended discovery at this stage of the proceedings would disrupt the orderly process established by this Court and would likely result in duplicative, under-inclusive, over-inclusive, or otherwise deficient discovery because the scope of the claims that will go forward has not yet been determined.

3. Admitted. By way of further response, this Court previously sustained preliminary objections and dismissed this action as non-justiciable. Such dismissal was reversed on September 28, 2017 by the Pennsylvania Supreme Court, which remanded the matter to this Court for further proceedings. The Supreme Court held that, upon remand to this Court, “[i]t remains for Petitioners to substantiate and elucidate the classification at issue and to establish the nature of

the right to education, if any, to determine what standard of review the lower court must employ to evaluate their challenge. But Petitioners are entitled to the opportunity to do so.” *William Penn Sch. Dist. v. Pennsylvania Dep't of Educ.*, 170 A.3d 414, 464 (Pa. 2017). The Commonwealth Court’s May 7, 2018 Order sets forth the process for resolving those issues. Permitting additional discovery before this process has been completed would be contrary to both this Court’s May 7, 2018 Order and the goal of judicial efficiency.

4. Admitted that this Court entered an Order on May 7, 2018. That Order is in writing and speaks for itself and Petitioners’ characterization thereof is denied to the extent it is inconsistent with the language of the written document.

5. Admitted that this Court entered an Order on August 20, 2018 denying Senator Scarnati’s Application in the Nature of a Motion to Dismiss for Mootness. That Order is in writing and speaks for itself and Petitioners’ characterization thereof is denied to the extent it is inconsistent with the language of the written document.

6. The allegations in this paragraph state legal conclusions to which no response is required. It is further averred that, although a ruling on Speaker Turzai’s forthcoming motion for partial summary relief will not foreclose Petitioners’ claim under the Education Clause, a ruling on the nature of the rights at issue and the standard of review to be applied could materially and profoundly

impact all aspects of this matter going forward, including what discovery is permissible and appropriate.

7. Admitted in part, denied in part. It is admitted that regardless of the outcome of the motion for partial summary relief, discovery will “take time” and will involve interrogatories, documents, depositions and information from the parties to this action and third parties. It is denied that a ruling on such motion would not “lessen” the amount of discovery needed. By way of further response, while a ruling on a motion for partial summary relief will not foreclose Petitioners’ claim under the Education Clause, such ruling will materially and profoundly impact all aspects of this matter going forward, including what discovery is permissible and appropriate. By way of example, a conclusion that there is no individual right to a uniform standard of education in Pennsylvania would likely preclude any discovery directed at the theory that the Pennsylvania Constitution has been violated because students in some school districts have more resources available to them than students in other school districts, as well as any discovery attempting to compare academic achievement across students or school districts.

8. The allegations in this paragraph state legal conclusions to which no response is required. By way of further response, Speaker Turzai opposes the relief sought in this Application and incorporates his responses to the above paragraphs as set forth at length herein. It is further averred that education funding

litigation commonly takes many years, and in some cases several decades, to resolve because of the incredibly difficult constitutional issues presented by such cases, including those relating to the critical issue of separation of powers. The respondents, including Speaker Turzai, are all government entities or individuals sued in their official capacity. The already burdened resources of these government parties should not be further strained by commencing merits discovery while critical legal issues relating to the nature of the right at issue and the appropriate standard of review are still being decided.

Notwithstanding Petitioners' contrary position, there is no doubt that this Court's decision on the forthcoming motion for partial summary relief will have a profound and material impact that will shape this matter going forward. Furthermore, it is readily foreseeable that requests for discovery from Speaker Turzai or other legislative sources could run afoul of the Pennsylvania Constitution's Speech and Debate Clause, which must be construed "broadly in order to protect legislators from judicial interference with their legitimate legislative activities" *See League of Women Voters of Pennsylvania v. Commonwealth*, 177 A.3d 1000, 1003 (Pa. Cmwlth. 2017). Therefore, as this Court recently recognized, the judiciary "lacks the authority to compel testimony or the production of documents relative to the intentions, motivations, and

activities of state legislators and their staff with respect to the consideration and passage of” legislation. *Id.* at 1005.

Accordingly, Speaker Turzai respectfully requests that this Court deny the Application and adhere to the schedule already set forth in its May 7, 2018 Order, under which further discovery will not commence until after this Court rules upon any partial motions for summary relief, following briefing and argument.

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