

SUMMARY OF PENDING LAWSUIT CHALLENGING THE GENDER IDENTITY PROTECTIONS IN PENNSYLVANIA HUMAN RELATIONS ACT

August 2025

On March 6, 2025, the Commonwealth Court of Pennsylvania received a complaint challenging the gender identity regulations¹ adopted in 2023 after public comment under the Pennsylvania Human Relations Act (PHRA). The regulations remain in full force and effect while this lawsuit is proceeding.

WHO FILED THE LAWSUIT? WHO IS BEING SUED?

The petitioners, or entities bringing the complaint, include South Side Area School District (in Beaver County), Knoch School District (in Butler County), various parents of students in the Pennsylvania school system, the minor children of those parents, and Pennsylvania House of Representatives members Aaron Bernstine and Barbara Gleim. The [Thomas More Society](#) is legal counsel for the petitioners.

The Office of the Governor and the Pennsylvania Human Relations Commission (PHRC), which issued the regulations, were the original respondents, or those who are being sued. The respondents argued that Gov. Josh Shapiro was not a proper party for this case, and the petitioners have since removed the Office of the Governor, leaving the PHRC as the sole respondent.

WHAT ARE THE PETITIONERS' ARGUMENTS?

The petitioners are challenging the PHRC regulations under the “non-delegation doctrine” and the Equal Rights Amendment of the Pennsylvania Constitution. Specifically, the complaint challenged the regulations that clarify what is considered discrimination based on race, religious creed, or sex – Subchapter D of Title 16 of the Pennsylvania Code, [16 Pa. Code §§ 41.201 - 41.207](#).²

The non-delegation doctrine is the principle that the Pennsylvania legislature is limited in the power that it can give to other branches of government, including agencies like the PHRC. Under this doctrine, a law passed by the legislature must make the basic policy decisions for a law and include standards in the law that explain how it will be implemented by an agency. If the law follows these rules, the legislature can authorize an agency or other government body to execute or administer the law, following their discretion. Often, agencies will use that discretion to pass

¹ “Regulations,” also referred to as “rules,” are the terms used to refer to the administrative law issued by the PHRC in a formal publication process.

² While the complaint challenges the whole subchapter, the arguments appear focused only on the definition of sex.

rules and regulations to make it clear what people need to do, or not do, to follow the law. In this case, the petitioners are alleging that the PHRC regulations violate the non-delegation doctrine.

The Equal Rights Amendment of the Pennsylvania Constitution states that no one can be denied “equality of rights” because of their sex. The petitioners allege that the PHRC regulations conflict with the definition of “sex” that includes different male and female reproductive functions identified by the Pennsylvania Supreme Court in a recent case interpreting Pennsylvania’s Equal Rights Amendment. *See Allegheny Reprod. Health Ctr. V. Pa. Dep’t of Hum. Servs.*, 309 A.3d 808, 868-869 (Pa. 2024).

WHAT ARE THE RESPONDENT’S ARGUMENTS?

The PHRC, as the respondent, argues that the petitioners lack standing to bring the complaint, meaning that the petitioners do not have a legal right to bring this lawsuit before the court. One requirement to have standing is that the person bringing the suit must have suffered harm or must be in immediate danger of suffering harm. In this case, the petitioners did not explain how the regulations are specifically harming them. PHRC argues that the case should be dismissed because the petitioners do not have the right to bring it if they were not directly harmed.

Next, PHRC argues that *even if* the court decides to hear this case, the PHRC regulations do not violate the non-delegation doctrine or the Pennsylvania Equal Rights Amendment. The respondent argues that the PHRC has the power from the Pennsylvania legislature to pass regulations implementing the law, as other court cases have already decided, and therefore could not have violated the non-delegation doctrine. Likewise, the respondent argues that the PHRC regulations do not deny or lessen anyone’s rights based on their sex and therefore cannot violate the state’s Equal Rights Amendment.

BOTH SIDES HAVE ASKED THE COURT FOR A DECISION ON THE LAW

The respondent, PHRC, has filed preliminary objections to the complaint, requesting that the lawsuit be dismissed. In addition, both sides have filed applications for summary relief, asking the court to rule in their favor because, they allege, their respective right to judgment is clear and there are no material issues of fact in dispute. Both parties contend that based on their arguments described above, the court should decide in their favor.

WHAT DOES THIS MEAN FOR STUDENTS RIGHT NOW?

After the court receives both parties’ full arguments in briefing documents, it will schedule oral argument and determine whether to dismiss the case. The court will also consider both sides’ applications for summary relief. In the meantime, the **PHRC regulations remain in effect**. Students continue to benefit from any protections provided by the PHRA or PHRC regulations.

Students and parents concerned that their school is not following the PHRC’s guidance can contact ELC’s Helpline at 215-238-6970. The process to submit a complaint to the PHRC is explained in [this ELC fact sheet](#) and on the [PHRC website](#).

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The Education Law Center-PA (ELC) is a nonprofit, legal advocacy organization with offices in Philadelphia and Pittsburgh, dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, community engagement, and policy advocacy, ELC advances the rights of underserved children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, English learners, LGBTQ students, and children experiencing homelessness.

ELC's publications provide a general statement of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact ELC's Helpline for information and advice – visit www.elc-pa.org/contact or call 215-238-6970 (Eastern and Central PA) or 412-258-2120 (Western PA) – or contact another attorney of your choice.