

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

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

**APPLICATION IN THE NATURE OF A MOTION  
TO DISMISS FOR MOOTNESS**

Pursuant to Pennsylvania Rules of Appellate Procedure 123 and 1972(a)(4), Respondent Joseph B. Scarnati, President *pro tempore* of the Pennsylvania Senate, moves for this Court to (i) dismiss this case as moot and (ii) suspend Respondents’ obligation to file an answer to the Petition for Review until it decides the request to dismiss the case as moot. In tandem with this application, Senator Scarnati is submitting a brief in support of the application. He also states as follows:

**THIS CASE IS MOOT AND THE COURT SHOULD DISMISS IT**

1. Pennsylvania Rule of Appellate Procedure 1972(a)(4) provides that, “[e]xcept as otherwise prescribed by this rule, subject to Pa.R.A.P. 123, any party may move... (4) To dismiss for mootness.” Pa.R.A.P. 1972(a)(4); *see also Harris*

*v. Rendell*, 982 A.2d 1030, 1035 (Pa. Cmwlth. 2009) (“Pa.R.A.P. 1972(a)(4) permits a party to move for dismissal for mootness during litigation.”).

2. In their Petition for Review (“Petition”), Petitioners allege that the Pennsylvania “school funding arrangement” that was in place in 2014, when they commenced this case, violated Article III, Section 14 of the Pennsylvania Constitution (the “Education Clause”) and the equal protection principles of Article III, Section 32 of the Pennsylvania Constitution. *See, e.g.*, Petition at ¶¶ 300-311.

3. Petitioners reference the funding formula that Act 61 of 2008 had established and allege that, “[s]ince the Commonwealth abandoned the 2008 funding formula,” it used “thirteen one-time formulas” to allocate state funding among school districts. *Id.* ¶ 293.

4. Petitioners criticize the “funding arrangement” that was in place when they filed the Petition because it did not “consider” various factors that, in their view, it should have considered. *Id.* at ¶ 291.

5. Ultimately, Petitioners allege that the “funding arrangement” that was in place when they commenced this case violated the Education Clause because it failed to ensure that students in lower-wealth school districts had access to sufficient resources to obtain an adequate education. *See id.* at ¶ 304. And they allege that the funding arrangement in question violated equal protection principles

because it denied students in lower-wealth school districts the same opportunity to obtain an adequate education as students in higher-wealth school districts. *See id.* at ¶ 310.

6. That funding arrangement, however, is *no longer in effect*.

7. On June 1, 2016, the General Assembly enacted Act 35 of 2016 (or “Act 35”), P.L. 252, No. 35 (June 1, 2016), 24 P.S. § 25-2502.53, which established a new school funding formula, one that 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...”).

8. Before it was enacted into law in Act 35, the new funding formula was developed and approved by the Basic Education Funding Commission, *see* 24 P.S. § 25-2502.53(a), a bipartisan group of 15 state officials who, under Act 51 of 2014, P.L. 675, No. 51 (June 10, 2014), were tasked with developing a new, more equitable formula for distributing state funds to school districts. *See* 24 P.S. § 1-123(h).

9. Act 35 of 2016 fully supplanted the “funding arrangement” that was in place when Petitioners commenced this case. That arrangement no longer has any force or effect.

10. Petitioners are therefore challenging statutes that are simply no longer effective.

11. This case, as a consequence, is moot. *See, e.g., Dep't of Env'tl. Res. v. Jubelirer*, 614 A.2d 204, 211 (Pa. 1992); *In re Gross*, 382 A.2d 116, 120 (Pa. 1978); *Northern Pa. Power Co. v. Pa. Pub. Util. Comm'n*, 5 A.2d 133, 134 (Pa. 1939), overruled on other grounds, *City of York v. Pa. Pub. Util. Comm'n*, 295 A.2d 825 (Pa. 1972); *Commonwealth v. Packer Twp.*, 60 A.3d 189, 192 (Pa. Cmwlth. 2012).

12. 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.

13. Petitioners allege that the prior arrangement did not consider, for example, the “additional expense” of educating economically-disadvantaged students and English-language learners, the differences among school districts with regard to things like size, location, population density, and costs of living, and “the ability of local taxpayers to pay the amounts necessary, above and beyond state appropriations, to provide an adequate education to students in their district.” Petition at ¶ 291.

14. And yet the Act 35 funding formula expressly considers those factors (and more). *See* 24 P.S. § 25-2502.53(b)(2) & (d) (definitions).

15. Petitioners are therefore challenging a legal state of affairs that simply no longer exists.

16. And none of the exceptions to the mootness doctrine apply here – in particular because Act 35 of 2016 represents a change in the law that supplants the prior “funding arrangement,” is effective indefinitely, and attempts to address the very concerns that Petitioners raise in their Petition. *See, e.g., In re Gross*, 382 A.2d at 123 (attempt to invoke repetition-yet-evading-review exception “is not persuasive where mootness has been determined because of a change in the law, particularly where this change attempts to address the objections raised by [the challenger]”); *Harris v. Rendell*, 982 A.2d 1030, 1037 (Pa. Cmwlth. 2009) (If “the [new] statute ‘deals squarely with the issues,’ the case does not fall within the great public importance exception” to the mootness doctrine) (quoting *In re Gross*, 382 A.2d at 123).

17. There is nothing, moreover, to suggest that Petitioners will suffer a detriment if this Court refrains from deciding the moot case that is currently before it — especially considering the current procedural posture of the case, one in which some of Respondents’ preliminary objections remain pending.

18. If Petitioners believe that Act 35’s school funding formula, like the prior formula, violates the Education Clause and equal protection principles, they are not precluded from challenging it on those grounds.

19. 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 v. Cortes*, 142 A.3d 1004, 1017 (Pa. Cmwlth. 2016) (internal quotations and brackets omitted), the Court should dismiss this case as moot.

20. Indeed, in this instance, 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 and brackets omitted).

### **RELIEF SOUGHT**

WHEREFORE, for the reasons stated above and in his brief in support of this application, Senator Scarnati respectfully requests that the Court (i) dismiss this case as moot and (ii) suspend Respondents’ obligation to file an answer to the Petition for Review until it decides the request to dismiss the case as moot.

December 27, 2017

Respectfully submitted,

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## CERTIFICATE OF SERVICE

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