

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 587 MD 2014

**WILLIAM PENN SCHOOL DISTRICT, et al.,
Petitioners,**

v.

**PENNSYLVANIA DEPARTMENT OF EDUCATION, et al.,
Respondents.**

**EXECUTIVE RESPONDENTS' BRIEF IN RESPONSE TO
RESPONDENT SCARNATI'S MOOTNESS APPLICATION**

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STATEMENT OF THE CASE

Petitioners filed this action alleging that the school funding scheme for K-12 education in Pennsylvania violates the Constitution of the Commonwealth of Pennsylvania. The Petitioners are six school districts, the Pennsylvania Association of Rural and Small Schools, several parents of school-age children, and the Pennsylvania State Conference of the National Association for the Advancement of Colored People. The Respondents are Governor Tom Wolf, the Secretary of Education Pedro A. Rivera, the Department of Education (collectively referred to as “Executive Respondents”), the State Board of Education, the President *Pro Tempore* of the Pennsylvania Senate, and the Speaker of the Pennsylvania House of Representatives.

Petitioners claim that the school funding scheme in place at the time the Petition was filed violates Article III, § 14 (the “Education Clause”) and § 32 (the “Equal Protection Clause”) of the Pennsylvania Constitution. Petitioners claim that the Commonwealth’s academic standards set forth a course of study for students and a progression from grade-to-grade that form the core of the Commonwealth’s public education system, but that Respondents have violated their constitutional duties by failing to provide sufficient resources to meet those standards because the funding levels are irrational, arbitrary and not reasonably calculated to ensure that all students will receive the required services to obtain the required sufficiency in the

subject areas. Petitioners seek injunctive and declaratory relief, including a mandatory injunction “compelling” the Respondents to “establish, fund and maintain” a system of public education that, in their view, will enable all students to “participate meaningfully in the economic, civic, and social activities of our society”; and request that the Court maintain continuing jurisdiction until this goal has been met.

PROCEDURAL HISTORY

Petitioners commenced this litigation on November 10, 2014. The Respondents each filed preliminary objections. Specifically, the prior executive administration, through the Governor, the Pennsylvania Department of Education, the Acting Secretary of Education, and the State Board of Education jointly filed preliminary objections alleging that: (1) Petitioners’ claims presented a nonjusticiable political question; (2) Petitioners failed to state a claim for which relief may be granted because the system of public education is rationally related to legitimate government objections; (3) Petitioners’ claims were barred by sovereign immunity insofar as the petition seeks a mandatory injunction; and (4) Petitioners’ claims were barred by the separation of powers doctrine insofar as the petition sought to compel action by the General Assembly.¹

¹ Similarly, the Legislative Respondents filed preliminary objections alleging: (1) Petitioners’ claims presented a nonjusticiable political question; (2) Petitioners failed to state a claim under the Education Clause because the funding system served

On April 21, 2015, this Honorable Court sustained Respondents' preliminary objection that the matter was a nonjusticiable political question. *William Penn Sch. Dist. v. Pa. Dep't of Educ.*, 114 A.3d 456 & n. 15 (Pa. Cmwlth. 2015) (*en banc*). The Court, therefore, dismissed Petitioners' claims without reaching a decision on the Respondents' remaining preliminary objections.

Following appeal to the Supreme Court of Pennsylvania by the Petitioners, the Supreme Court reversed and remanded the order of this Court. The Supreme Court held that both the Petitioners' Education Clause and Equal Protection claims are justiciable. *William Penn Sch. Dist. v. Pa. Dep't of Educ.*, 170 A.3d 414 (Pa. 2017).

Upon remand, this Court set a deadline for Respondents to Answer the Petition for Review. Thereafter, Speaker Turzai moved to stay the Answer deadline and to permit supplemental briefing on the Respondents' remaining preliminary objections. Additionally, Respondent Scarnati, President *Pro Tempore* of the Pennsylvania Senate, moved to dismiss the case as moot. This Court stayed the deadline to respond to the Petition until a ruling upon the Application to Dismiss for Mootness and the Respondents' remaining preliminary objections were decided.

the rational basis of preserving local control over public education; and (3) Petitioners failed to state a claim upon which relief may be granted under the Equal Protection Clause.

After hearing argument, this Court overruled, without prejudice, the preliminary objections regarding the nature of the constitutional rights at issue and the level of scrutiny to be applied and overruled all other preliminary objections. *William Penn Sch. Dist. v. Pa. Dep't of Educ.*, 2018 Pa. Commw. Unpub. LEXIS 249, at *13-16 (May 7, 2018). The Court deferred ruling on Respondent Scarnati's Application for Dismissal for Mootness, permitted the Petitioners to file any amended pleading or further written argument, and requested factual support of their argument against mootness within 60 days. *Id.* at *16. Petitioners filed their opposition to the application on July 6, 2018. This is the Executive Respondents' brief in response.

ACT 35

During the pendency of the appeal, in support of Governor Wolf's commitment to ensuring that every child, regardless of zip code, has access to a high-quality education, Governor Wolf and the General Assembly worked together to enact new legislation in 2016 that changed Pennsylvania's public school funding scheme.

On April 25, 2016, Governor Wolf and the General Assembly adopted a new basic education funding formula for the 2015-16 fiscal year. 72 P.S. § 1722-L(17.1). This formula was made permanent in Act 35 of 2016, P.L. 252, No. 35 (June 1, 2016), 24 P.S. § 25-2502.53 ("Act 35"), and provides for allocation of a dedicated

portion of state funds pursuant to dynamic, student-based factors, including the number of children in the district who live in poverty. By signing Act 35 into law, the Governor ensured that new basic education funding would be directed to school districts based upon fair, objective criteria, such as student enrollment, the needs of the student population, the wealth of the school district and its capacity to raise revenue.

As a result, additional funding totaling \$538,700,000 was processed through the student-weighted basic education funding formula since the 2014-15 school year. In addition, \$102,850,000 for special education funding was appropriated since the 2013-14 school year.

ARGUMENT

In his application, Senator Scarnati implies that Governor Wolf's and the legislature's successes in adopting Act 35 have rendered the instant matter moot. As a general rule, courts will not decide cases in which "there is no actual case or controversy in existence at all stages of the controversy." *Phila. Pub. Sch. Notebook v. Sch. Dist. of Phila.*, 49 A.3d 445, 448 (Pa. Cmwlth. 2012). However, the Supreme Court recognized that, even if certain claims presented technically were mooted by the passage of Act 35, it could proceed on the basis that the issues as stated "are of importance to the public interest and 'capable of repetition yet evading review.'" *William Penn Sch. Dist.*, 170 A.3d at 435 n. 34.

The Executive Respondents agree that the current action is not mooted by Act 35. Petitioners are not challenging an isolated statutory or regulatory enactment, but the adequacy of the system of public education. While Act 35 established a new, permanent school funding formula and had significant impact on the education funding scheme, unfortunately, as Petitioners' brief highlights, much work remains to be done before Petitioners' claims are no longer relevant or capable of adjudication.

Indeed, Act 35's fair funding formula is only as good as the amount of money behind it. Despite facing considerable head-winds in the General Assembly, the Governor has secured substantial additional funding for needy school districts. More funding is needed to ensure that our system of education is made equal to the promise of our children. In order to fairly and equitably fund all Pennsylvania public schools, especially those struggling and disadvantaged districts, the General Assembly must work with the Governor to increase overall education funding. In that process, those districts that rely heavily upon, and anticipate, a minimum level of funding resources each year must continue to be assured that they will not suffer funding cuts and will continue to receive funds adequate to provide an appropriate education to all students. These factors remain just as relevant today as they were on the day that Petitioners filed their complaint.

CONCLUSION

All Pennsylvania public school students deserve a high-quality education and access to the educational resources necessary for them to be successful in the 21st century. The work to increase funding for public schools is not over. Governor Wolf strongly believes in the need for increased funding for Pennsylvania public schools and continues to fight for additional appropriations for public education.

Accordingly, the Executive Respondents respectfully request that this Court deny Respondent Scarnati's application for mootness and enter an order setting a deadline for the filing of answers to the Petition for Review so that the parties may move this matter toward a resolution that may further advancements in education funding.

Respectfully submitted,

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