

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

**SPEAKER TURZAI'S APPLICATION TO PERMIT SUPPLEMENTAL BRIEFING
AND ARGUMENT OF UNRESOLVED PRELIMINARY OBJECTIONS, STAY TIME
FOR ANSWERING PETITION AND SHORTEN TO SEVEN DAYS THE TIME TO
RESPOND TO APPLICATION**

Pursuant to Pennsylvania Rule of Appellate Procedure 123, Speaker of The House Michael C. Turzai (“**Speaker Turzai**”), by and through his undersigned counsel, respectfully submits the following Application to permit supplemental briefing and argument of unresolved Preliminary Objections and stay the time for Respondents to answer the Petition until the Preliminary Objections have been decided. Further, because Respondents’ Answer is currently due on December 20, 2017. Speaker Turzai respectfully requests that the time to Answer the instant Application be shortened to 7 days. In support of this Application, Speaker Turzai avers as follows:

1. On November 10, 2014, Petitioners filed a Petition for Review in this Court's original jurisdiction seeking declaratory and injunctive relief against various Commonwealth parties, including Speaker Turzai, Senate President *Pro Tempore* Scarnati, the Department of Education, the Governor, and the Secretary of Education.¹

2. Generally speaking, the Petition alleges that Pennsylvania's system for funding public education is unconstitutional because, according to Petitioners, it is inadequate to meet the educational needs of students in poorer school districts and discriminates against students based on the comparative wealth of the school district in which they reside. Count I of the Petition purports to state a claim under Article III, § 14 of the Pennsylvania Constitution, which requires the General Assembly to "provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth" ("**Education Clause**"). Count II of the Petition contends that Respondents have violated the constitutional guarantees of equal protection embodied in Article III, § 32 of the Pennsylvania Constitution ("**Equal Protection Clause**").

¹ Speaker Turzai and Senator Scarnati joined in their preliminary objections and are collectively referred to as "Legislative Respondents." Senator Scarnati is now represented by separate counsel.

3. On December 10, 2014, Legislative Respondents filed Preliminary Objections with this Court. The Executive Branch Respondents also filed Preliminary Objections.

4. Specifically, Legislative Respondents raised three Preliminary Objections. First, that Petitioners' claims raised nonjusticiable political questions. Second, that Count I of the Petition fails to state a claim upon which relief can be granted under the Education Clause, because as a matter of law the legislative scheme for financing public education "has a reasonable relation" to providing for the maintenance and support of a thorough and efficient system of public schools. Third, that Count II of the Petition fails to state a claim upon which relief can be granted under the Equal Protection Clause, because education is not a "fundamental right" for the purposes of an equal protection analysis and the current education funding system serves the rational basis of preserving local control over public education.

5. Respondents' Preliminary Objections were argued to this Court *en banc*. On April 21, 2015, this Court issued an Order and Opinion ("**Supreme Court Opinion**") sustaining Legislative Respondents' first Preliminary Objection on the basis that the matters presented by the Petition were nonjusticiable political questions.

6. Because this Court determined that Petitioners' claims were nonjusticiable, it did not resolve Legislative Respondents' remaining Preliminary Objections based upon the failure to state a claim.

7. On September 25, 2017, the Pennsylvania Supreme Court issued an Order and Opinion ("**Supreme Court Opinion**") reversing this Court's March 11, 2015 Order and remanding for further proceedings consistent with that Opinion.

8. By order dated November 17, 2017, this Court ordered Respondents to file an answer to the Petition within 30 days of the exit date of the Order. Because the Order has an exit date of November 20, 2017, Respondents' Answer is currently due on or before December 20, 2017.

9. The Supreme Court Opinion expressly recognized that the Court's holding was limited to the Preliminary Objection arguing nonjusticiability and was not intended to resolve or prejudice Respondents' ability to pursue their unresolved Preliminary Objections on remand. Specifically, the Supreme Court Opinion stated on page 30, Footnote 29:

The Commonwealth Court did not rule upon these preliminary objections, which are independent of the justiciability argument upon which the Commonwealth Court relied in sustaining Respondents' preliminary objections. Accordingly, we do not address them herein. These arguments remain salient upon remand, and our

decision is not intended to prejudice Respondents' right to pursue them further in the Court below."²

10. Pursuant to the Supreme Court's direction, Speaker Turzai asks this Court upon remand to decide Legislative Respondents' unresolved second and third Preliminary Objections based upon failure to state a claim.

11. Legislative Respondents believe that the parties and this Court would benefit from supplemental briefing and argument with respect to the issues raised by Legislative Respondents' unresolved Preliminary Objections.

12. Specifically, while the Supreme Court's Opinion is based solely upon the justiciability question, it contains analysis and discussion that is potentially relevant to Legislative Respondents' outstanding Preliminary Objections. By way of example, the Supreme Court stated that "we do not read any of our prior cases as settling whether the Pennsylvania Constitution confers an individual right to education—and, if so, of what sort." [Opinion at 79-80]. The Supreme Court further stated that resolution of the question of "what sort of right is at issue ... will dictate what standard of review applies to Petitioners' Equal Protection Claim, should it proceed." [*Id.* at 79].

² In addition to the Legislative Respondents' Preliminary Objections, the Executive Branch Respondents asserted Preliminary Objections based on sovereign immunity. Because Speaker Turzai is not a party to that Preliminary Objection, he takes no position as to whether the supplemental briefing requested by this Application should also include the unresolved sovereign immunity issues raised by Executive Branch Respondents.

13. Furthermore, because it has been nearly three years since Legislative Respondents first briefed their Preliminary Objections to this Court, there may be subsequent legal developments in Pennsylvania or other jurisdictions that are relevant to the legal issues presented by Legislative Respondents' unresolved Preliminary Objections, including but not limited to the key question of "what sort of right is at issue."

14. Accordingly, Speaker Turzai requests supplemental briefing and argument to address Legislative Respondents' unresolved Preliminary Objections in light of the Court's September 25, 2017 Opinion and Order.

15. Further, Speaker Turzai requests this Court to stay Respondents' obligation to file an Answer until after the Court has received supplemental briefing and argument on the preliminary objections and issued its decision thereon.

16. Because Respondents' Answer is currently due on December 20, 2017, Speaker Turzai respectfully requests that the time to respond to this Application be shortened to seven days pursuant to Pa. R.A.P. 123(b) ("The court may shorten or extend the time for answering any application").

WHEREFORE, Speaker Turzai respectfully requests that this Court grant his Application and issue a schedule for supplemental briefing and argument on Legislative Respondents' Preliminary Objections and to stay Respondents' obligation to file an Answer to the Petition until after this Court has decided the unresolved Preliminary Objections.

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