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# NEWS RELEASE

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## *County Commissioners v. Commonwealth: Order, opinion, concurring opinion*

J-167-94-1

[ J-167-1994 ]

IN THE SUPREME COURT OF PENNSYLVANIA  
WESTERN DISTRICT

PENNSYLVANIA STATE ASSOCIATION : No. 112 Western District  
OF COUNTY COMMISSIONERS, COUNTY : Miscellaneous Docket 1992  
OF ALLEGHENY, COUNTY OF BUCKS, :  
COUNTY OF CUMBERLAND, COUNTY OF :  
DAUPHIN, COUNTY OF ERIE, COUNTY :  
OF FOREST, COUNTY OF FULTON, :  
COUNTY OF MONROE, COUNTY OF :  
SNYDER, COUNTY OF TIOGA, : Action in Mandamus  
Petitioners : Pursuant to 42 Pa.C.S.A.  
: 721(2)  
:  
V. :  
::  
COMMONWEALTH OF PENNSYLVANIA; :  
COMMONWEALTH OF PENNSYLVANIA, :  
GENERAL ASSEMBLY; MARK S. :  
SCHWEIKER IN HIS OFFICIAL CAPACITY :  
AS PRESIDENT PRO-TEMPORE OF : **SUBMITTED:**

THE PENNSYLVANIA SENATE AND : SEPTEMBER 30, 1994

MATTHEW J. RYAN IN HIS OFFICIAL :

CAPACITY AS SPEAKER OF THE :

PENNSYLVANIA HOUSE OF :

REPRESENTATIVES, :

Respondents Pursuant to Pa.R.A.P. 502(c) the successors to the public officers named in the original caption have been substituted as parties. :

### **OPINION OF THE COURT**

MR. JUSTICE FLAHERTY DECIDED: JULY 26, 1996

In 1987 this court held that the statutory scheme for county funding of the judicial system of Pennsylvania was unconstitutional pursuant to Article 5, Section 1 of the Pennsylvania Constitution. County of Allegheny v. Commonwealth of Pennsylvania, 517 Pa. 65, 534 A.2d 760 (1987)(Allegheny County II). However, because we were mindful not only of our duty to interpret and give effect to the Pennsylvania Constitution, but also of our duty to act in cooperation with the General Assembly, a coordinate branch of government, we stayed our judgment in order to give the General Assembly an opportunity to enact funding legislation which would cure the constitutional defect. We left in place the system of county funding until this new legislation was implemented. That was nine years ago. At this writing, the General Assembly has not enacted an alternate system of funding the courts of Pennsylvania. The Pennsylvania State Association of County Commissioners and ten counties (hereinafter "the Counties") now bring this action in mandamus pursuant to an application for this court to exercise its original jurisdiction to compel the General Assembly to abide by the order in Allegheny County II, requiring a state scheme of funding the courts of Pennsylvania. For the reasons that follow, we grant the petition for mandamus and order that the General Assembly enact a funding scheme for the court system on or before January 1, 1998.

The Commonwealth of Pennsylvania, the General Assembly, the former President of the Senate, Mark S. Singel, and the former Speaker of the House, H. William DeWeese Messrs. Singel and DeWeese were parties to the original action and have been replaced as parties by Messrs. Schweiker and Ryan. See n. 1. supra. (hereinafter "the Commonwealth") argue that mandamus is not available to petitioners; that the "speech and debate clause" of the Pennsylvania Constitution shields the legislative branch from this court's authority; that this court's denial of nearly identical prior petitions requires denial of this petition; and that a similar case is pending, barring this case from proceeding.

The Counties assert that original jurisdiction for this mandamus action is conferred by 42 Pa.C.S. 721(2), which provides:

The Supreme Court shall have original but not exclusive jurisdiction of all cases of:

- (1) Habeas corpus.
- (2) Mandamus or prohibition to courts of inferior jurisdiction.
- (3) Quo Warranto as to any officer of Statewide jurisdiction.

The Commonwealth argues that this court has no jurisdiction pursuant to 721 because a mandamus action applies only to matters within the original jurisdiction of the court, Pa.R.A.P. 3307, and this case does not fall within this court's original jurisdiction because this case does not involve mandamus to a court of inferior jurisdiction.

We agree that the plain meaning of 721 excludes jurisdiction in this court in a mandamus action directed at the General Assembly. We disagree, however, that the petition must be dismissed for lack of jurisdiction. 42 Pa. C.S. 726 provides:

Notwithstanding any other provision of law, the Supreme Court may, on its own motion or upon petition of any party, in any matter pending before any court or district justice of this Commonwealth involving an issue of immediate public

importance, assume plenary jurisdiction of such matter at any stage thereof and enter a final order or otherwise cause right and justice to be done.

This is a matter of immediate public importance, and pursuant to 726 we assume jurisdiction.

Petitioner's action is in mandamus. In County of Allegheny v. Commonwealth of Pennsylvania, 507 Pa. 360, 372-73, 490 A.2d 402, 408 (1985)(Allegheny County I), we stated:

Mandamus is an extraordinary remedy designed to compel official performance of a ministerial act or mandatory duty where there exists a clear legal right in the plaintiff, a corresponding duty in the defendant and want of any other adequate remedy at law. . . . Where the action sought to be compelled is discretionary, mandamus will not lie to control that discretionary act, . . . but courts will review the exercise of the actor's discretion where it is arbitrary or fraudulently exercised or is based upon a mistaken view of the law.

(Citations omitted.) Since the gravamen of the complaint is that petitioners seek to compel the official performance of a ministerial act or mandatory duty and that there is no other remedy at law, it is apparent that the complaint sounds in mandamus. It is equally apparent that the General Assembly has a mandatory duty to fund the state courts and that petitioners have no other remedy at law.

The Commonwealth claims, however, that the doctrine of separation of powers which is stated in the "speech or debate clause" of the Pennsylvania Constitution prohibits this action against the General Assembly. The speech or debate clause provides that "for any speech or debate in either House, [the legislators] shall not be questioned in any other place." Pa. Const. art. II, 15. The Commonwealth's view of this clause is that it "insulates legislators not only from controversies over legislation which it has passed, but also over the legislature's allegedly "contumacious conduct." Brief at 14.

In Consumer's Association v. Nolan, 470 Pa. 372, 382, 368 A.2d 675, 680-81 (1977), we addressed the speech and debate clause of the Pennsylvania Constitution and noted that it is essentially identical to a comparable clause in the United States Constitution, the scope of which has been interpreted in federal cases:

[T]he Supreme Court of the United States recently held that the federal Speech and Debate Clause must be interpreted broadly in order to protect legislators from judicial interference with their legitimate legislative activities, and that even where the activity questioned is not literally speech or debate, a court must determine if it falls within the "legitimate legislative sphere"; if it does, the action against the legislator calling it into question, whether criminal or civil, must be dismissed.

A lawsuit to compel legislative action normally would be barred by the speech and debate clause. Litigants may not sue in court to compel the legislature to enact a law.

In this case, however, where the legislature has been directed by this court to act in order to remedy a constitutional defect in the scheme which funds the court system, funding of which is necessary for the continued existence of the judicial branch of government, the legislature is not insulated from suit by the speech and debate clause. If it were, this court's duty to interpret and enforce the Pennsylvania Constitution would be abrogated, thus rendering ineffective the tripartite system of government which lies at the basis of our constitution. As this court stated in Beckert v. Warren:

A basic precept of our form of government is that the executive, the legislature and the judiciary are independent, co-equal branches of government. . . .

The allocation of these governmental powers to three distinct branches averts the danger inherent in the concentration of absolute power in a single body. . . .

However, the separation of powers would not achieve this prophylactic effect unless it also prevented one branch from usurping the powers committed to the other branches of government. The crucial function of the separation of powers principle, therefore, is not separation per se, but the "checking" power each branch has over the others. . . .

Thus, while the judicial power is vested exclusively in the courts, the taxing and spending powers necessary to sustain the existence of the judiciary is vested in the legislature. As we explained in Leahey v. Farrell, . . . :

Control of state finances rests with the legislature, subject only to constitutional limitations. . . . Under the system of division of governmental powers it frequently happens that the functions of one branch may overlap another. But the successful and efficient administration of government assumes that each branch will cooperate with the others. . . .

Should Commissioners, however, neglect or refuse to furnish funds, or sufficient funds, for reasonable judicial functions, and in consequence the efficient administration of the judicial branch of the government is thereby impaired or destroyed, the courts possess the inherent power to require such necessities to be furnished and to direct payment therefor out of the public treasury. . . .

Absent such inherent power, the judiciary whose existence is mandated by Article 5 of the Pennsylvania Constitution, could be destroyed by the legislature:

Mr. Chief Justice Marshall said in McCulloch v. Maryland, 17 U.S. 316 431 [4 Wheat 316, 4 L.Ed. 579] ". . . the power to tax involves the power to destroy; . . ." A Legislature has the power of life and death over all the Courts and over the entire Judicial system. Unless the Legislature can be compelled by the Courts to provide the money which is reasonably necessary for the proper functioning and administration of the Courts, our entire Judicial system could be extirpated, and the Legislature could make a mockery of our form of Government with its three co-equal branches -- the Executive, the Legislative and the Judicial.

It follows, therefore, that since the destruction of one branch of government by another would be antithetical to the constitutional scheme of separation of powers, any legislative action which impairs the independence of the judiciary in its exercise of the judicial power and the administration of justice would be similarly abhorrent.

497 Pa. 137, 144-47, 439 A.2d 638, 642-43 (1981)(Citations omitted.) In this case as in Beckert, although the constitutional threat takes a different form, at issue is the continued existence of an independent judiciary. The Speech and Debate clause does not insulate the legislature from this court's authority to require the legislative branch to act in accord with the Constitution.

The Commonwealth also asserts that the present action is barred by principles of *lis alibi pendens*, *res judicata* and collateral estoppel in that prior similar actions have been filed and rejected by this court. Suffice it to say that at this time, no other actions are pending, that in prior actions there has not been an identity of parties and that the relief sought in prior actions has not been identical to the relief sought in this action. Thus, neither *res judicata*, nor collateral estoppel, nor *lis alibi pendens* may serve to bar the present action. On February 12, 1991, Allegheny County filed a motion to lift stay and enforce judgment. On April 23, 1991 this court denied the motion. PSACC filed a motion to enforce judgment on October 7, 1992. This motion was denied on May 26, 1993. There are no other pending motions.

Because this court has attempted to act cooperatively with the General Assembly and has denied prior petitions for enforcement, allowing the General Assembly a period of nine years to enact a funding scheme which would provide the necessary financial support for state courts, and because the General Assembly has failed to act within this extended reasonable period of time, we now grant petitioner's request for a writ of mandamus. Pursuant to this writ, jurisdiction is retained and by further order a master will be appointed to recommend to this court a schema which will form the basis for the specific implementation to be ordered.

Madame Justice Newman files a concurring opinion.

Mr. Chief Justice Nix files a dissenting opinion in which Mr. Justice Castille joins.

Mr. Justice Castille files a dissenting opinion in which Mr. Chief Justice Nix joins.