
IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Docket No. 410 MD 2017

MATTHEW J. BROUILLETTE, et al.,

Petitioner,

v.

THOMAS WOLF, et al.,

Respondents.

**BRIEF IN SUPPORT OF THE PRELIMINARY
OBJECTIONS OF RESPONDENTS
HON. MICHAEL TURZAI AND HON. DAVE L. REED**

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Respondents Hon. Michael Turzai, Speaker of the Pennsylvania House of Representatives (“Speaker Turzai”) and Hon. Dave L. Reed, Majority Leader of the Pennsylvania House of Representatives (“Majority Leader Reed,” and together with Speaker Turzai, the “House Respondents”), by and through their attorneys, Buchanan Ingersoll & Rooney, PC, submit this brief in support of their preliminary objections to the Petition for Review filed by Petitioners Matthew J. Brouillette, Benjamin Lewis and the Hon. James Christiana.

I. STATEMENT OF THE CASE

In this action, Petitioners challenge the budget process in the Commonwealth of Pennsylvania, an annual effort between the executive and legislative branches which must result in a balanced operating budget. Throughout this process, the General Assembly works with the Governor, engaging in ongoing negotiations to establish a fiscal year budget, appropriate funds, and avoid a deficit. But the ultimate responsibility to ensure a balanced budget rests with the Governor under the Pennsylvania Constitution, which confers upon him the responsibility and authority to veto in whole or in part particular items.

Weeks ago, Governor Wolf fulfilled his executive mandate, signing into law several bills that fully fund the state’s fiscal year 2017-2018 budget. Assuming a live controversy somehow exists, Petitioners nonetheless fail to state claims upon which relief may be granted.

Count Two, for instance, fails under the Speech or Debate immunity afforded to legislators, which insulates the House Respondents from this litigation. Count

Two otherwise presents a nonjusticiable political question, requiring dismissal of the sole claim against the House Respondents. Accordingly, this Court should sustain the House Respondents' Preliminary Objections to Count Two.

II. STANDARD AND SCOPE OF REVIEW

In ruling on preliminary objections in the nature of a demurrer, this court “must accept as true all well-pleaded facts and all reasonable inferences deducible therefrom,” but it “need not accept conclusions of law.” *Marin v. Sec’y of Com.*, 41 A.3d 913, 915 n.2 (Pa. Commw. Ct. 2012).

III. ARGUMENT

A. **The Speech or Debate Clause Immunizes the House Respondents from this Litigation.**

As a threshold matter, Petitioners' action against the House Respondents should be dismissed because they enjoy immunity from suit under the Speech or Debate Clause of the Pennsylvania Constitution. The Speech or Debate Clause, found in Article II, Section 15 of the Pennsylvania Constitution provides that “for any speech or debate in either House,” members of the General Assembly “shall not be questioned in any other place.” Pa. Const. art. II, § 15. The Pennsylvania Supreme Court has instructed that this principle “must be interpreted broadly in order to protect legislators from judicial interference with their legitimate legislative activities.” *Consumers Ed. & Protective Ass’n v. Nolan*, 368 A.2d 675, 680–81 (Pa. 1977).¹ And “even where the activity questioned is not literally speech

1. The Court's discussion focused on the federal Speech or Debate Clause,” but it ultimately “[found] no basis for distinguishing the scope of the Pennsylvania Speech and Debate Clause applicable to

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." *Id.*

The passage of legislation – particularly on the annual budget – is a fundamental duty and power of the General Assembly under the Pennsylvania Constitution. See Pa. Const. art. II, § 1 (“The legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives.”). Indeed, “nothing is more basic to the independence and integrity of the legislature than its ability to pass legislation.” *Consumer Party of Pennsylvania v. Com.*, 507 A.2d 323, 330 (Pa. 1986) *abrogated on other grounds by Pennsylvanians Against Gambling Expansion Fund, Inc. v. Com.*, 877 A.2d 383 (Pa. 2005); see also *Lincoln Party by Robinson v. Gen. Assembly*, 682 A.2d 1326, 1333 (Pa. Commw. Ct. 1996) (“[Q]uite frankly, the Court cannot envision a more important legislative function.”).

Undeterred by these bedrock principles, Petitioners attack the legislative process relating to the budget for the past two fiscal years. But there is no question that that the General Assembly’s passage of fiscal bills falls within the legitimate legislative sphere, so as to be protected by the House Respondents’ constitutionally-conferred Speech or Debate immunity. Petitioners’ claims against the House Respondents are therefore precluded, and this Court should sustain their Preliminary Objections, dismissing this case against them with prejudice.

members of the General Assembly from that of the federal clause applicable to members of Congress.” *Consumers Ed. & Protective Ass’n v. Nolan*, 368 A.2d 675, 681 (Pa. 1977).

B. This Case Otherwise Presents a Nonjusticiable Political Question.

Petitioners likewise invite this Court to intrude upon nonjusticiable political questions related to the legislature's role in the budget process. This Court should decline to do so.

"The cornerstone of our republican democracy is the principle of government divided into three separate, co-equal branches that both empower and constrain one another." *William Penn Sch. Dist. v. Pennsylvania Dep't of Educ.*, --A.3d --, No. 46 MAP 2015, 2017 WL 4287879, at *16 (Pa. Sept. 28, 2017). At times, "[j]udicial review stands as a bulwark against unconstitutional or otherwise illegal actions by the two political branches." *Id.* Yet the courts have "long have recognized that the very same imperatives sometimes require judicial abstention." *Id.* "A challenge to the Legislature's exercise of a power which the Constitution commits exclusively to the Legislature presents a nonjusticiable 'political question.'" *Sweeney v. Tucker*, 375 A.2d 698, 705 (Pa. 1977) (citation omitted).

"The parameters of the political question doctrine have never been amenable to precise definition." *William Penn Sch. Dist.*, 2017 WL 4287879, at *16. But since *Baker v. Carr*, Pennsylvania has employed the U.S. Supreme Court's six-factor test in its own political question jurisprudence:

[S]everal formulations which vary slightly according to the settings in which the questions arise may describe a political question, although each has one or more elements which identify it as essentially a function of the separation of powers. Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding

without an initial policy determination of a kind clearly for non-judicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Id. (quoting *Baker*, 369 U.S. at 217). In Pennsylvania, however, this doctrine reflects “prudential concerns, implicating courts’ self-imposed limitations.” *Id.* (quoting *Robinson Twp., Washington Cty. v. Com.*, 83 A.3d 901, 917 (Pa. 2013)).

Courts in this Commonwealth will “refrain from resolving a dispute and reviewing the actions of another branch only where the determination whether the action taken is within the power granted by the Constitution has been entrusted exclusively and finally to the political branches of government for ‘self-monitoring.’” *Id.* at *18 (citation omitted). Importantly, “courts must take great care in wading deeply into questions of social and economic policy, which [they] long have recognized as fitting poorly with the judiciary’s institutional competencies.” *Id.* at *36.

For its part, the budget process “obviously entails a myriad of difficult policy decisions, among competing interests, in determining fiscal priorities and attendant allocations.” *Sears v. Wolf*, 118 A.3d 1091, 1103 (Pa. 2015). The Pennsylvania Constitution, however, entrusts this process exclusively and finally to other branches of government. *See, e.g.*, Pa. Const. art. VIII, §§ 12, 13; art. IV, §§ 15, 16. Article VIII, Section 12(a) of the Pennsylvania Constitution, for instance, “requires the Governor to submit an annual balanced operating budget to the General

Assembly detailing proposed expenditures and estimated revenues.” *Mental Health Ass’n in Pennsylvania v. Corbett*, 54 A.3d 100, 103 (Pa. Commw. Ct. 2012) (citing Pa. Const. art. VIII, § 12(a); Sections 613 and 701(g) of the Administrative Code). After the General Assembly enacts a budget, the Governor has the power to “veto legislation to the extent that this power is vested in him by Sections 15 and 16 of Article IV.” *Jubelirer v. Rendell*, 953 A.2d 514, 529 (Pa. 2008). The constitutional budget process requires negotiation between the executive and legislative branches, but the Governor has the last word on budgetary matters and it remains the Governor’s constitutional duty to “reduce amounts appropriated in order to satisfy the constitutional requirement of a balanced budget.” *Id.* at 525 (discussion of appellant’s “traditional understanding of Section 16”); *see also* 71 P.S. § 238(a) (“The Governor shall item veto any part of any appropriation bill that causes total appropriations to exceed the official estimate plus any unappropriated surplus.”).

Against this backdrop, this Court has repeatedly observed that “[t]he budgeting process is beyond the power of courts to direct.” *Mental Health Ass’n*, 54 A.3d at 105 (quoting *City & Cty. of Philadelphia ex rel. Philadelphia Dep’t of Human Servs. v. Dep’t of Pub. Welfare*, 941 A.2d 766, 775 (Pa. Commw. Ct. 2008)). But that is what Petitioners implore the Court to do here – they ask the Court to review the House Respondents’ role in the annual budget process and the passage of legislation. *See, e.g.*, Pet. For Review, ¶39 (“Article VIII, Section 13 prohibits the General Assembly from passing the General Appropriations Bills that it has enacted for the past two fiscal years.”). Their requests intrude upon the decision-

making process of the General Assembly into which the separation of powers forbids this Court to step.

It is the General Assembly that determines how budget obligations will be satisfied, and through his veto power, the Governor has the last opportunity and ultimate responsibility to ensure that the budget is balanced. “There is no authority for this Court to insert itself into that process.” *Mental Health Ass’n*, 54 A.3d at 105. As such, this Court should hold that Count Two of the Petition for Review presents a nonjusticiable political question, sustain the Preliminary Objections, and dismiss Count Two against the House Respondents.

IV. CONCLUSION

For the foregoing reasons, Speaker Turzai and Majority Leader Reed respectfully request that this Court sustain their preliminary objections and dismiss Count Two of the Petition for Review as asserted against them by Petitioners.

Respectfully submitted,

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