

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

MATTHEW J. BROUILLETTE, et al.,

Petitioners, : No. 410 MD 2017

v.

THOMAS WOLF, et al.,

Respondents. :

NOTICE TO PLEAD

TO: PETITIONERS

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE ENCLOSED PRELIMINARY OBJECTIONS WITHIN THIRTY (30) DAYS FROM SERVICE HEREOF OR A JUDGMENT MAY BE ENTERED AGAINST YOU.

Dated: December 7, 2017 s/ Matthew H. Haverstick
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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

MATTHEW J. BROUILLETTE, et al.,

Petitioners, : No. 410 MD 2017

v.

THOMAS WOLF, et al.,

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**PRELIMINARY OBJECTIONS BY RESPONDENTS SENATORS
JOSEPH B. SCARNATI, III AND JAKE CORMAN**

Respondents Senator Joseph B. Scarnati, III and Senator Jake Corman (collectively, the “Senators”), hereby submit the following Preliminary Objections to the Amended Petition for Review by Petitioners Matthew J. Brouillette, Representative James Christiana, and Benjamin Lewis. For the reasons discussed below, the claims asserted against the Senators in the Amended Petition for Review should be dismissed because: (1) the action presents non-justiciable political questions related to the Commonwealth’s budgeting process; (2) the claims raised by Petitioners have been rendered moot by recent legislative enactments; (3) Petitioners lack the requisite standing to bring this action; (4) Petitioners have failed to sufficiently state a claim

upon which relief can be granted; (5) Petitioners' claims related to last fiscal year's alleged budget imbalance are barred by laches; (6) Petitioners' claims are barred by legislative immunity; and (7) Petitioners' claims are barred by sovereign immunity. In support of their Preliminary Objections, the Senators state as follows:

1. On September 14, 2017, Petitioners filed a three-count Petition for Review ("PFR") invoking this Court's original jurisdiction.

2. Named as Respondents in the PFR were the following, all in their official capacities: Governor Thomas Wolf, Secretary Randy Albright, Treasurer Joseph Torsella, Auditor General Eugene DePasquale, House Speaker Michael Turzai, House Majority Leader Dave Reed, Senator President Pro Tempore Joseph B. Scarnati, III, Senator Majority Leader Jake Corman, and the General Assembly. *See* PFR at ¶¶ 12-20.

3. Beyond Rep. Turzai, Rep. Reed, and the Senators, the PFR did not name any other individual legislators. *See* PFR at ¶¶ 16-19.

4. Only Count II of the PFR was relevant to the Senators, as the Senators were not named as Respondents in either Count I or Count

III of the PFR. *See* PFR at pg. 17, Count I Caption; PFR at pg. 19, Count II Caption; PFR at pg. 21, Count III Caption.

5. In general, Count II of the PFR alleged a violation of Pennsylvania Constitution Article VIII, Section 13. *See* PFR at pg. 19, Count II Caption.

6. In their prayer for relief for Count II of the PFR, Petitioners Brouillette and Lewis sought declaratory, mandamus and injunctive relief against the Senators and other members of the General Assembly as follows:

WHEREFORE, Petitioners demand judgment in their favor and against Respondents as follows:

(1) To enter a declaratory judgment that the actions, policies, and practices complained of herein, and performed by the General Assembly, its leadership, and each of its members, have violated and continue to violate the Pennsylvania Constitution;

(2) To require that the General Assembly, its leadership, and each of its members use the assessment of the Independent Fiscal Office to specify and define “actual and estimated revenues,” and that General Appropriations Bills shall not exceed available revenues;

(3) To enjoin the General Assembly, its leadership, and each of its members from voting upon legislation that authorizes any line of credit or loan (from the Treasury or otherwise) to account for deficit spending and the unconstitutional incurring of debt in the current Budget from FY2017-2018.

PFR at pg. 20-21, Count II Prayer for Relief.

7. On October 19, 2017, the Senators filed Preliminary Objections to the PFR.

8. The Senators' Preliminary Objections to the PFR specifically challenged the proposed mandamus and injunctive relief sought by Petitioners in Count II against the Senators and other members of the General Assembly as being barred by the doctrines of sovereign and legislative immunity, as well as being subject to dismissal for failure to join indispensable parties, namely the other members of the General Assembly. *See generally* Senators' POs to PFR.

9. In response to the Senators' Preliminary Objections to the PFR, on November 7, 2017, Petitioners filed a three-count Amended PFR.

10. The Amended PFR is substantially the same as the original PFR, but the Amended PFR added the Commonwealth of Pennsylvania as a party and removed Secretary Randy Albright as a party. *Compare* PFR, *with* Amended PFR.

11. Although the substantive allegations of Count II remain the same in the Amended PFR, the Amended PFR changed the text of the

Prayer for Relief to remove any explicit reference to the mandamus and/or injunctive relief expressly sought by Petitioners Brouillette and Lewis in the original PFR. *See* Amended PFR at pg. 29, Count II Prayer for Relief.

12. Count II of the Amended PFR is now limited on its face to seeking the following two declaratory judgments:

- (1) That the General Appropriations Bill for FY2016-2017 violated the requirements set forth in Article VIII, Section 13 of the Pennsylvania Constitution, as the Commonwealth ended FY2016-2017 with a \$1.55 billion deficit. Pa. Const. art. VIII, § 13;
- (2) That the General Appropriations Bill for FY2017-2018 violates the requirements set forth in Article VIII, Section 13 of the Pennsylvania Constitution because, at the time of enactment, appropriations contained therein “exceed[ed] the actual and estimated revenues and surplus available in the same fiscal year[]” by \$600 million. Pa. Const. art. VIII, § 13.

Amended PFR at pg. 29, Count II Prayer for Relief.

13. Despite attempting to limit the relief sought in Count II of the Amended PFR to declaratory relief through creative pleading, Count II of the Amended PFR still seeks the same mandamus and/or injunctive relief sought by Petitioners Brouillette and Lewis in the original PFR (but without having expressly pled so).

14. Indeed, although Count II of the Amended PFR may appear on its face to seek only declaratory relief, if the two requested declaratory judgments are entered in favor of Petitioners, then the Senators and other members of the General Assembly would be compelled to act and pass new General Appropriations Bills for at least FY 2017-2018, and perhaps in some way as yet unknown, for the already ended FY 2016-2017.

15. As Petitioners acknowledge in both their original PFR and Amended PFR, “[t]he General Assembly must draft a General Appropriations Bill [each year], which contains appropriations for the executive, legislative, and judicial departments; for public schools; and for public debt.” PFR & Amended PFR at ¶ 38. *See also* Pa. Const. art. III, § 11.

16. Thus, if the General Appropriations Bills for FY 2016-2017 and FY 2017-2018 were declared constitutionally infirm, the Senators and General Assembly would be constitutionally required to pass a new General Appropriations Bill for at least the current fiscal year. *See* Pa. Const. art. III, § 11.

17. Accordingly, the ultimate relief sought by Petitioners in Count II from the original PFR to the Amended PFR remains the same—compelling the Senators and the General Assembly to draft, consider, and enact new legislation.

**Preliminary Objection No. 1:
Political Question Doctrine**

18. The Senators incorporate the preceding paragraphs of these Preliminary Objections as if fully set forth herein.

19. Pennsylvania Rule of Civil Procedure 1028(a)(1) permits the filing of preliminary objections to a pleading over which the court lacks subject matter jurisdiction. *See* Pa.R.Civ.P. 1028(a)(1).

20. Parties may raise justiciability questions under the political question doctrine by filing preliminary objections to a petition for review filed in the original jurisdiction of this Court. *Robinson Twp., Washington Cty. v. Com.*, 83 A.3d 901, 917 (Pa. 2013).

21. Under the political question doctrine, which is generally considered to derive from the principle of constitutional separation of powers, the courts will not review the actions of another branch of government where the Pennsylvania Constitution entrusts those actions to that other branch. *Council 13, Am. Fed'n of State, Cty. &*

Mun. Employees, AFL-CIO ex rel. Fillman v. Rendell, 986 A.2d 63, 74 (Pa. 2009).

22. Courts will not review the actions of another branch of government where political questions are involved because the determination of whether an action taken is within the power granted by the Pennsylvania Constitution has been entrusted exclusively and finally to the political branches of government for self-monitoring. *Blackwell v. City of Philadelphia*, 684 A.2d 1068, 1071 (Pa. 1996).

23. A challenge to the legislature's exercise of a power which the Pennsylvania Constitution commits exclusively to the legislature presents a non-justiciable political question. *Grimaud v. Com.*, 865 A.2d 835, 847 (Pa. 2005); *Common Cause/Pennsylvania v. Com.*, 710 A.2d 108, 117 (Pa. Cmwlth. 1998), *aff'd*, 757 A.2d 367 (Pa. 2000); *Sweeney v. Tucker*, 375 A.2d 698, 705 (Pa. 1977).

24. This Court has expressly recognized: "***The budgeting process is beyond the power of courts to direct.*** Courts cannot direct the Governor how to speak to the legislature any more than they can direct the legislature what amount to appropriate for the Office of Children, Youth and Families." *City & Cty. of Philadelphia ex rel.*

Philadelphia Dep't of Human Servs. v. Dep't of Pub. Welfare, 941 A.2d 766, 775 (Pa. Cmwlth. 2008) (emphasis added). *See also Mental Health Ass'n in Pennsylvania v. Corbett*, 54 A.3d 100, 104-05 (Pa. Cmwlth. 2012).

25. As Petitioners acknowledge in the Amended PFR, the Senators and the other members of the General Assembly are exclusively entrusted under the Pennsylvania Constitution with passing an annual General Appropriations Bill and adopting a capital budget for the ensuing fiscal year. *See also* Amended PFR at ¶¶ 37-38. *See also* Pa. Const. art. III, § 11; VIII, § 13.

26. Pursuant to this exclusive grant of constitutional authority, the Senators and the other members of the General Assembly lawfully passed and enacted General Appropriations Bills for FY 2016-2017 and FY 2017-2018. *See* Amended PFR at ¶¶ 50-51, 57-58.

27. Count II of the Amended PFR does not challenge whether the General Appropriations Bills for FY 2016-2017 and FY 2017-2018 were lawfully passed and enacted; rather, Count II of the Amended PFR challenges the content of those General Appropriations Bills and, specifically, whether or not those Bills provided for appropriately

“balanced” budgets for FY 2016-2017 and FY 2017-2018. *See* Amended PFR at pg. 29, Count II Prayer for Relief.

28. Thus, Petitioners Brouillette and Lewis are asking this Court to scrutinize, interfere with, and even second-guess the contents of the General Appropriations Bills for FY 2016-2017 and FY 2017-2018, even though the drafting, consideration, and passage of these Bills is constitutionally reserved to the legislative branch. *See* Pa. Const. art. III, § 11.

29. However, as this Court has previously recognized, the Commonwealth’s annual budgeting process is beyond the power of this Court to direct and, therefore, this Court must refrain from entertaining Petitioners’ present challenge to the budgeting processes for FY 2016-2017 and FY 2017-2018. *See Mental Health Ass’n*, 54 A.3d at 104-05 (holding budgetary matters were beyond power of court to direct and, therefore, political question doctrine barred action challenging alleged failure to provide adequate funding for services required by Mental Health and Intellectual Disability Act).

WHEREFORE, the Senators request that the Court sustain their Preliminary Objection and dismiss the Amended PFR as presenting non-justiciable political questions related to the budgeting process.

Preliminary Objection No. 2:
Mootness

30. The Senators incorporate the preceding paragraphs of these Preliminary Objections as if fully set forth herein.

31. Pennsylvania Rule of Civil Procedure 1028(a)(1) permits the filing of preliminary objections to a pleading over which the court lacks subject matter jurisdiction. *See* Pa.R.Civ.P. 1028(a)(1).

32. Justiciability of a case includes the doctrine of mootness. *Burke v. Independence Blue Cross*, 103 A.3d 1267, 1270 (Pa. 2014).

33. Generally, courts will dismiss a case as moot unless an actual case or controversy exists at all stages of the judicial or administrative process. *Kupershmidt v. Wild Acres Lakes Prop. Owners' Ass'n*, 143 A.3d 1057, 1061 (Pa. Cmwlth. 2016).

34. A claim of mootness “stands on the predicate that a subsequent change in circumstances has eliminated the controversy so that the court lacks the ability to issue a meaningful order, that is, an order that can have any practical effect.” *Burke*, 103 A.3d at 1271.

35. Judicial intervention “is appropriate only where the underlying controversy is real and concrete, rather than abstract.” *City of Philadelphia v. Commonwealth*, 838 A.2d 566, 577 (Pa. 2003).

36. As Petitioners acknowledge in the Amended PFR, on October 30, 2017, the Senators and the other members of the General Assembly passed and the Governor signed into law new legislation that would ensure that the Commonwealth budget would be appropriately “balanced” for FY 2016-2017 and FY 2017-2018. *See* Amended PFR at ¶ 58.

37. Given these recent legislative enactments, which post-dated the filing of Petitioners’ original PFR, Petitioners’ claims related to the budgeting process have been rendered moot.

WHEREFORE, the Senators request that the Court sustain their Preliminary Objection and dismiss the Amended PFR in its entirety as moot.

**Preliminary Objection No. 3:
Lack of Capacity to Sue—Petitioners Brouillette and Lewis**

38. The Senators incorporate the preceding paragraphs of these Preliminary Objections as if fully set forth herein.

39. Pennsylvania Rule of Civil Procedure 1028(a)(5) permits the filing of preliminary objections to a pleading for lack of capacity to sue. *See* Pa.R.Civ.P. 1028(a)(5).

40. In adjudicating preliminary objections alleging a lack of capacity to sue, the Court must consider the petitioners' standing. *PG Pub. Co. v. Governor's Office of Admin.*, 120 A.3d 456, 461 (Pa. Cmwlth. 2015), *aff'd*, 135 A.3d 578 (Pa. 2016).

41. Petitioners Brouillette and Lewis assert taxpayer standing as grounds for filing the Amended PFR. *See* Amended PFR at ¶¶ 8-10, 85.

42. A taxpayer has standing to challenge a legislative act if: (1) the governmental action would otherwise go unchallenged; (2) those directly and immediately affected by the complained-of matter are beneficially affected and not inclined to challenge the action; (3) judicial relief is appropriate; (4) redress through other channels is unavailable; and (5) no other persons are better situated to assert the claim. *Stilp v. Com., Gen. Assembly*, 940 A.2d 1227, 1233 (Pa. 2007).

43. Petitioners Brouillette and Lewis cannot meet any of the five requirements for taxpayer standing.

44. *First*, any one of the multiple Respondents named to this action, if appropriate, could have challenged the budgetary enactments for FY 2016-2017 or FY 2017-2018 that are currently being challenged by Petitioners Brouillette and Lewis here.

45. *Second*, all of those parties directly and immediately affected by the complained-of budgetary enactments for FY 2016-2017 and FY 2017-2018, including the Respondents named in this action, are *not* beneficially affected and, if so inclined, could have lodged a challenge to those budgetary enactments.

46. *Third*, judicial relief is not only legally inappropriate here, but unwarranted.

47. *Fourth*, redress through other channels and, specifically, the political process is not only available here but represents the appropriate avenue of recourse for Petitioners.

48. *Fifth*, and finally, the multiple Respondents named in this action are better situated to assert the budgetary challenges raised by Petitioners Brouillette and Lewis in this action.

49. Accordingly, because Petitioners Brouillette and Lewis do not have taxpayer standing to bring this action, their claims against the Senators must be dismissed.

50. Petitioners Brouillette and Lewis also appear to assert that a potential and unsubstantiated decrease in their respective real property values provides an additional basis for standing to challenge the budgetary enactments for FY 2016-2017 or FY 2017-2018. *See* Amended PFR at ¶¶ 8-10, 86-88.

51. Generally, the doctrine of standing is an inquiry into whether the petitioners filing suit have demonstrated aggrievement, by establishing a substantial, direct, and immediate interest in the outcome of the litigation. *Yocum v. Commonwealth Pennsylvania Gaming Control Bd.*, 161 A.3d 228, 234 (Pa. 2017).

52. One has a direct interest in litigation if there is a causal connection between the asserted violation and the harm complained of; it is immediate if that causal connection is not remote or speculative. *Id.* at 235.

53. Here, the alleged harm of Petitioners Brouillette and Lewis to their real property values is purely remote and speculative, and entirely without any factual support. *See* Amended PFR at ¶¶ 86-88.

54. Accordingly, the additional assertion of Petitioners Brouillette and Lewis that they somehow have standing to bring this action based on a hypothetical decrease in their real property values is equally unavailing.

WHEREFORE, the Senators request that the Court sustain their Preliminary Objection and dismiss the claims asserted by Petitioners Brouillette and Lewis as required by Rule 1028(a)(5) of the Pennsylvania Rules of Civil Procedure.

Preliminary Objection No. 4:
Demurrer

55. The Senators incorporate the preceding paragraphs of these Preliminary Objections as if fully set forth herein.

56. Pennsylvania Rule of Civil Procedure 1028(a)(4) permits the filing of preliminary objections to a pleading that is legally insufficient. *See* Pa.R.Civ.P. 1028(a)(4).

57. A preliminary objection in the nature of a demurrer challenges a pleading as failing to set forth a cause of action upon which

relief can be granted. *Giordano v. Ridge*, 737 A.2d 350, 352 (Pa. Cmwlt. 1999).

58. Count II of the Amended PFR seeks a declaration:

That the General Appropriations Bill for FY2016-2017 violated the requirements set forth in Article VIII, Section 13 of the Pennsylvania Constitution, as the Commonwealth ended FY2016-2017 with a \$1.55 billion deficit. Pa. Const. art. VIII, § 13[.]

Amended PFR at pg. 29, Count II Prayer for Relief.

59. Specifically, Count II of the Amended PFR seeks to invalidate last year's General Appropriations Bill for FY 2016-2017, and then have the Senators and the other members of the General Assembly pass a new General Appropriations Bill for that fiscal year that has already elapsed. *See id.*

60. The relief requested by Petitioners—having the Senators and the other members of the General Assembly draft, consider, and pass a new General Appropriations Bill for a fiscal year that has already expired and for a fiscal year in which the appropriations have already been spent, would be infeasible and impractical, if not impossible.

61. Accordingly, because the relief requested by Petitioners for FY 2016-2017 would be impractical, if not impossible, any claims related to FY 2016-2017 should be stricken from Count II of the Amended PFR.

WHEREFORE, the Senators request that the Court sustain their Preliminary Objection and dismiss those claims in Count II of the Amended PFR related to FY 2016-2017 as required by Rule 1028(a)(4) of the Pennsylvania Rules of Civil Procedure.

Preliminary Objection No. 5:
Laches

62. The Senators incorporate the preceding paragraphs of these Preliminary Objections as if fully set forth herein.

63. Pennsylvania Rule of Civil Procedure 1028(a)(4) permits the filing of preliminary objections to a pleading that is legally insufficient. *See* Pa.R.Civ.P. 1028(a)(4).

64. Laches may be raised and determined by preliminary objection if laches clearly appears in the complaint. *Holiday Lounge, Inc. v. Shaler Enterprises Corp.*, 272 A.2d 175, 177 (Pa. 1971).

65. Laches is an equitable doctrine that bars relief when a complaining party is guilty of want of due diligence in failing to

promptly institute an action to the prejudice of another. *Stilp v. Hafer*, 718 A.2d 290, 292 (Pa. 1998).

66. The doctrine of laches is the practical application of the maxim that those who sleep on their rights must awaken to the consequence that they have disappeared. *Fulton v. Fulton*, 106 A.3d 127, 131 (Pa. Super. 2014).

67. Laches may bar a constitutional challenge. *Sernovitz v. Dershaw*, 127 A.3d 783, 792 (Pa. 2015); *Stilp*, 718 A.2d at 292.

68. Count II of the Amended Petition for Review seeks a declaration:

That the General Appropriations Bill for FY2016-2017 violated the requirements set forth in Article VIII, Section 13 of the Pennsylvania Constitution, as the Commonwealth ended FY2016-2017 with a \$1.55 billion deficit. Pa. Const. art. VIII, § 13[.]

Amended PFR at pg. 29, Count II Prayer for Relief.

69. Specifically, Petitioners seek a declaration that last year's budget for FY 2016-2017 was not appropriately "balanced" and, therefore, it must be invalidated. *See id.*

70. Petitioners, however, were aware and knew at the very beginning of FY 2016-2017 that the budget for that year was allegedly

not “balanced”; yet, Petitioners slept on their rights for more than a year before commencing any challenge to the alleged imbalance.

71. As a result, Petitioners’ proposed undoing of the already concluded budget for FY 2016-2017 is impractical, if not impossible.

72. Accordingly, because Petitioners failed to exercise due diligence and promptly institute an action related to last year’s budget during FY 2016-2017, their claims concerning FY 2016-2017 must be dismissed. *See Sernovitz*, 127 A.3d at 792 (“belated process challenges to legislative enactments are disfavored”).

WHEREFORE, the Senators request that the Court sustain their Preliminary Objection and dismiss those claims in Count II of the Amended PFR related to the FY 2016-2017 as barred by laches.

**Preliminary Objection No. 6:
Legislative Immunity**

73. The Senators incorporate the preceding paragraphs of these Preliminary Objections as if fully set forth herein.

74. Pennsylvania Rule of Civil Procedure 1028(a)(4) permits the filing of preliminary objections to a pleading that is legally insufficient. *See Pa.R.Civ.P. 1028(a)(4)*.

75. The Speech or Debate Clause of the Pennsylvania

Constitution provides:

The members of the General Assembly shall in all cases, except treason, felony, violation of their oath of office, and breach or surety of the peace, be privileged from arrest during their attendance at the sessions of their respective Houses and in going to and returning from the same; and for any speech or debate in either House they shall not be questioned in any other place.

Pa. Const. art. II, § 15.

76. The Speech or Debate Clause “prohibits [judicial] inquiry into those things generally said or done in the House or Senate in the performance of official duties and into the motivation for those acts.” *Sweeney v. Tucker*, 375 A.2d 698, 704 (Pa. 1977).

77. The legislative immunity created by the Speech or Debate Clause insures that legislators are free to represent the interests of their constituents without fear that they will be later called to task in the courts for that representation. *Common Cause/Pennsylvania v. Com.*, 710 A.2d 108, 118 (Pa. Cmwlth. 1998), *aff’d*, 757 A.2d 367 (Pa. 2000).

78. Our Supreme Court has recognized that the Speech or Debate Clause “must be interpreted broadly in order to protect

legislators from judicial interference with their legitimate legislative activities.” *Consumers Educ. and Protective Ass’n v. Nolan*, 368 A.2d 675, 680-81 (Pa. 1977).

79. “[E]ven where the activity questioned is not literally speech or debate, . . . if it falls within the ‘legitimate legislative sphere’ . . . the action against the legislator . . . must be dismissed.” *Id.*

80. It is axiomatic that the introduction, consideration and passage of legislation falls within the legitimate sphere of legislative activity. *Lincoln Party v. Gen. Assembly*, 682 A.2d 1326, 1333 (Pa. Cmwlth. 1996).

81. Here, Petitioners Brouillette and Lewis are seeking to invalidate the General Appropriations Bills for FY 2016-2017 and FY 2017-2018 and compel the Senators and the other members of the General Assembly to pass new Bills for those fiscal years. *See Amended PFR at ¶¶ 101-109, Count II Prayer for Relief.*

82. However, the protection of the legislative branch from such judicial scrutiny and interference with regard to the consideration and passage of legislation is the very core of the protections afforded by the Speech or Debate Clause. *See Pennsylvania State Lodge v. Com., Dep’t*

of Labor & Indus., 692 A.2d 609, 614 (Pa. Cmwlth. 1997) (holding Speech or Debate Clause precluded court from examining reasons which precipitated amendment to Workers' Compensation Act); *Kennedy v. Com.*, 546 A.2d 733, 736 (Pa. Cmwlth. 1988) (holding action brought against legislature challenging constitutionality of act raising salaries for legislators and providing for increase in unvouchered expenses of legislators was barred by Speech or Debate Clause).

83. Moreover, the Speech or Debate Clause precludes the judiciary from interfering with those functions constitutionally reserved to the legislative branch, such as the taxing and spending power. *See* Pa. Const. art. II, § 1; *Finn v. Rendell*, 990 A.2d 100, 106 (Pa. Cmwlth. 2010) (holding relief sought by petitioners compelling appropriation of funds would interfere with function exclusively committed to legislative branch in contravention of Speech or Debate Clause).

84. Finally, to the extent that Petitioners Brouillette and Lewis seek to compel the Senators and the other members of the General Assembly to enact new General Appropriations Bills for FY 2016-2017 and FY 2017-2018, this is precisely the type of relief that the Speech or Debate Clause seeks to foreclose. *See Sears v. Corbett*, 49 A.3d 463, 482

(Pa. Cmwlth. 2012) (holding Speech or Debate Clause barred compelling General Assembly to enact new legislation affecting tobacco settlement monies), *rev'd and vacated sub nom. Sears v. Wolf*, 118 A.3d 1091 (Pa. 2015).

WHEREFORE, the Senators request that the Court sustain their Preliminary Objection and dismiss them from this action as required by Rule 1028(a)(4) of the Pennsylvania Rules of Civil Procedure.

**Preliminary Objection No. 7:
Sovereign Immunity**

85. The Senators incorporate the preceding paragraphs of these Preliminary Objections as if fully set forth herein.

86. Pennsylvania Rule of Civil Procedure 1028(a)(4) permits the filing of preliminary objections to a pleading that is legally insufficient. *See* Pa.R.Civ.P. 1028(a)(4).

87. Lawsuits against the Commonwealth and its agencies, officials, and employees acting within the scope of their duties are generally barred by sovereign immunity. *See* Pa. Const. art. 1, § 11; 1 Pa.C.S. § 2310.

88. Although sovereign immunity generally does not bar a declaratory judgment action to prohibit Commonwealth agencies or

officers from acting, sovereign immunity does apply to an action seeking to compel Commonwealth agencies or officers to act. *See Finn v. Rendell*, 990 A.2d 100, 105 (Pa. Cmwlth. 2010) (holding General Assembly was immune from suit because petitioners were seeking to compel affirmative action on part of General Assembly); *Joint Bargaining Comm. of Pennsylvania Soc. Servs. Union, Local No. 668, SEIU v. Com.*, 530 A.2d 962, 967 (Pa. Cmwlth. 1987) (holding sovereign immunity barred suit insofar as it sought allocation of funds or presentation of legislation to General Assembly).

89. Here, Petitioners Brouillette and Lewis are seeking not only to invalidate the General Appropriations Bills for FY 2016-2017 and FY 2017-2018, but they are also seeking to compel the Senators and the other members of the General Assembly to pass new General Appropriations Bills for those fiscal years. *See* Amended PFR at ¶¶ 101-109, Count II Prayer for Relief.

90. Indeed, as a whole, Count II of the Amended PFR is ostensibly asking this Court to compel the General Assembly, its leadership and each of its members to propose, introduce and enact one or more pieces of legislation in order to provide for what they deem are

“balanced” budgets for FY 2016-2017 and FY 2017-2018. *See* Amended PFR at ¶¶ 101-109, Count II Prayer for Relief.

91. To the extent that Petitioners Brouillette and Lewis are seeking to compel affirmative action on the part of the Senators and the other members of the General Assembly, including the enactment of any new pieces of legislation, those claims are clearly barred by sovereign immunity.

WHEREFORE, the Senators request that the Court sustain their Preliminary Objection and dismiss them from this action as required by Rule 1028(a)(4) of the Pennsylvania Rules of Civil Procedure.

**Preliminary Objection No. 8:
Lack of Capacity to Sue—Petitioner Christiana**

92. The Senators incorporate the preceding paragraphs of these Preliminary Objections as if fully set forth herein.

93. Pennsylvania Rule of Civil Procedure 1028(a)(5) permits the filing of preliminary objections to a pleading for lack of capacity to sue. *See* Pa.R.Civ.P. 1028(a)(5).

94. As the Amended PFR acknowledges, Petitioner Christiana is a representative in the Pennsylvania General Assembly. *See* Amended PFR at ¶ 11.

95. The Pennsylvania General Assembly is also named as a Respondent to this lawsuit. *See id* at ¶ 20.

96. It is a common principle of law that one cannot sue oneself. *Lee Publications, Inc. v. Dickinson Sch. of Law*, 848 A.2d 178, 188 (Pa. Cmwlth. 2004).

97. Accordingly, because Petitioner Christiana is both a Petitioner and a Respondent in this same lawsuit, his claims are barred.

98. Indeed, any legislative changes that Petitioners may seek can and should be pursued by Petitioner Christiana through the legislative process before the General Assembly, of which he is currently a member.

WHEREFORE, the Senators request that the Court sustain their Preliminary Objection and dismiss the claims asserted by Petitioner Christiana as required by Rule 1028(a)(5) of the Pennsylvania Rules of Civil Procedure.

Respectfully submitted,

s/ Matthew H. Haverstick

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