

**[J-36-2012] [MO: Saylor, J.]  
IN THE SUPREME COURT OF PENNSYLVANIA  
MIDDLE DISTRICT**

THE PENNSYLVANIA STATE : No. 59 MAP 2010  
EDUCATION ASSOCIATION, BY LYNNE :  
WILSON, GENERAL COUNSEL, : Appeal from the Order of the  
WILLIAM MCGILL, F. DARLENE : Commonwealth Court dated  
ALBAUGH, HEATHER KOLANICH, : September 24, 2010 at  
WAYNE DAVENPORT, FREDERICK : No. 396 M.D. 2009  
SMITH, JAMIE MCPOYLE, BRIANNA :  
MILLER, VALERIE BROWN, JANET :  
LAYTON, KORRI BROWN, AL REITZ, :  
LISA LANG, BRAD GROUP AND :  
RANDALL SOVISKY, :

Appellants

: ARGUED: April 10, 2012

v.

COMMONWEALTH OF PENNSYLVANIA, :  
DEPARTMENT OF COMMUNITY AND :  
ECONOMIC DEVELOPMENT, OFFICE :  
OF OPEN RECORDS, AND TERRY :  
MUTCHLER, EXECUTIVE DIRECTOR :  
OF THE OFFICE OF OPEN RECORDS, :

Appellees

PENNSYLVANIA ASSOCIATION OF :  
SCHOOL RETIREES, URENEUS V. :  
KIRKWOOD, JOHN B. NYE, :  
STEPHEN M. VAK, AND RICHARD :  
ROWLAND AND SIMON CAMPBELL, :  
INTERVENORS :

## CONCURRING OPINION

**MADAME JUSTICE TODD**

**DECIDED: August 21, 2012**

I join the Majority Opinion, subject to the observations expressed below.

Initially, today's opinion should not be read to alter or subordinate the requirements under the Judicial Code regarding the original jurisdiction of the Commonwealth Court. 42 Pa.C.S.A. § 761. Indeed, in delineating the original jurisdiction of the Commonwealth Court, the legislature imposed the necessity of an action against the "Commonwealth government." 42 Pa.C.S.A. § 761(a)(1). This mandate is satisfied here, as the Judicial Code defines the "Commonwealth government" as including "the courts and other officers or agencies of the unified judicial system, the General Assembly and its officers and agencies, the Governor, and the departments, boards, commissions, authorities and officers and agencies of the Commonwealth." 42 Pa.C.S.A. § 102. The Office of Open Records ("OOR") is clearly an agency of the Commonwealth under this definition, and, thus, this prerequisite for jurisdiction is satisfied.

Furthermore, case law clarifies that naming a Commonwealth agency is not enough to satisfy the jurisdictional requirement; the agency must also be an indispensable party. See CRY, Inc. v. Mill Serv., Inc., 536 Pa. 462, 472-74, 640 A.2d 372, 377-78 (1994). While the majority properly grounds its analysis regarding the requirement of an indispensable party on the "basic inquiry" of "whether justice can be done in the absence of a third party," Majority Opinion at 25 (citing CRY, Pa. at 469, 640 A.2d at 375), I do not read the Majority Opinion as discarding, *sub silentio*, the factors which our Court has traditionally considered in determining indispensable party status, which are implicitly considered in the majority's analysis. See Mechanicsburg Area Sch. Dist. v. Kline, 494 Pa. 476, 481, 431 A.2d 953, 956 (1981) (an indispensable party

consideration involves “at least” the following: (1) Do absent parties have a right or interest related to the claim; (2) If so, what is the nature of that right or interest; (3) Is that right or interest essential to the merits of the issue; (4) Can justice be afforded without violating the due process right of absent parties); see also City of Phila. v. Com., 575 Pa. 542, 567 n.11, 838 A.2d 566, 582 n.11 (2003); CRY, 536 Pa. at 468-69, 640 A.2d at 375.

Finally, the Declaratory Judgment Act provides that relief is not available when a matter is “[p]roceeding within the exclusive jurisdiction of a tribunal other than a court.” 42 Pa.C.S.A. § 7541(c)(2). As the majority recognizes, the Commonwealth Court did not ground its decision on this provision, yet that court acknowledged the possibility that it may not have jurisdiction over Appellant’s declaratory judgment action on this basis. The court noted that, as a tribunal, the OOR adjudicates appeals concerning requests made under the Right to Know Law, and that the existence of a statutory remedy may render the exercise of its jurisdiction improper. PSEA v. Com., 4 A.3d 1156, 1162-64 (Pa. Cmwlth. 2010). As offered by the majority, however, the Right To Know Law does not grant Appellants the right to intervene or appeal from a decision of the OOR, and, thus, does not provide Appellants a “reliable administrative or judicial method by which to seek redress for action that they believe violates the statutory scheme and/or their constitutional rights.” Majority Opinion at 21-22. Therefore, the Commonwealth Court’s suggestion that it lacked jurisdiction under the Declaratory Judgment Act on this basis is without merit. Majority Opinion at 24.