





has, from time to time, considered whether certain entities should be treated as governmental, or quasi-governmental. For example, in *Pennsylvania State University v. Derry Township School District*, 731 A.2d 1272 (Pa. 1999), we addressed whether the Pennsylvania State University should be exempt from local property taxes as a public entity. Additionally, in *Sphere Drake Insurance Company v. Philadelphia Gas Works*, 782 A.2d 510 (Pa. 2001), we addressed whether Philadelphia Gas Works should be entitled to governmental immunity as a local agency. These, however, were context-driven decisions.

A determination of whether a particular entity is “public” or “private,” generally speaking, is not a concept moored in our current state law jurisprudence. Context matters. In the federal litigation from which this matter originates, the context, as the Third Circuit noted, “is one of federal law.” Whether the JUA is a “private” entity that can assert federal constitutional rights against the Commonwealth is a matter of federal constitutional jurisprudence, not Pennsylvania law. See, e.g., *Goldman v. Se. Pa. Transp. Auth.*, 57 A.3d 1154, 1169-85 (Pa. 2012) (applying federal jurisprudence to determine whether entity was “arm of the Commonwealth” for purposes of Eleventh Amendment immunity); *Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. \_\_\_, 139 S. Ct. 1921, 1928-34 (2019) (applying state-action doctrine to determine that private entity operating public access channels on cable system was not state actor subject to Free Speech Clause of Fourteenth Amendment); *Edison v. Doublerly*, 604 F.3d 1307, 1308-10 (11<sup>th</sup> Cir. 2010) (concluding that private prison management corporation operating state prison was not public entity subject to liability under Americans With Disabilities Act simply because it contracted with public entity to provide service); *Patrick v. Floyd Med. Ctr.*, 201 F.3d 1313, 1315-17 (11<sup>th</sup> Cir. 2000) (applying nexus/joint action test to determine whether interdependence between private and public/state entities constituted sufficient

state involvement to sustain cause of action under 42 U.S.C. § 1983); see also *Perkins v. Londonderry Basketball Club*, 196 F.3d 13, 18 (1st Cir. 1999) (“[T]he public/private dichotomy remains embedded in our constitutional jurisprudence. This dichotomy distinguishes between state action, which must conform to the prescriptions of the Fourteenth Amendment, and private conduct, which generally enjoys immunity from Fourteenth Amendment strictures.” (internal citations omitted)).

In light of the foregoing, although Pennsylvania law may prove helpful and informative, the question currently before the Third Circuit is principally one of federal law. Given this context, we respectfully decline to answer the general question posed to us by the Third Circuit. See Pa.R.A.P. 3341(c) (“The Supreme Court may accept certification of a question of Pennsylvania law . . . .”).

**AND NOW**, this 21st day of February, 2024, the matter is DISMISSED as having been improvidently granted and returned to the Third Circuit.

Justice Wecht did not participate in the consideration or decision of this matter.