

COMMONWEALTH COURT OF PENNSYLVANIA

Joseph B. Scarnati, Senator and President pro tempore of the Senate  
of Pennsylvania v. Tom Wolf, Governor of Pennsylvania

135 A.3d 200 (Pa. Cmwlth. 2015) · No. 579 M.D. 2014 · Decided December 30, 2015

SUMMARY

The Pennsylvania Commonwealth Court considers a challenge by state senators to Governor Tom Wolf's predecessor's partial disapproval of provisions in the 2014 General Appropriations Act and Fiscal Code Amendments. The court addresses legislative standing, the constitutional procedure for returning a veto after legislative adjournment, public-proclamation notice requirements, and the Governor's authority to exercise line-item vetoes in related legislation. In the provided text, the court denies the respondents' preliminary objections and the senators' application for partial summary relief.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
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| COURT                 | Commonwealth Court of Pennsylvania                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| WRITING FOR THE COURT | Bonnie Brigance Leadbetter; Dan Pellegrini; Bernard L. McGinley; Renée Cohn Jubelirer; Patricia A. McCullough                                                                                                                                                                                                                                                                                                                                                             |
| JURISDICTION          | Pennsylvania                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| DECIDED               | December 30, 2015                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| DOCKET                | 579 M.D. 2014                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| DISPOSITION           | other                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| PROCEDURAL POSTURE    | Original-jurisdiction petition for review seeking declaratory and injunctive relief challenging former Governor Thomas Corbett's partial disapproval of the 2014 General Appropriations Act and 2014 Fiscal Code Amendments. Respondents filed preliminary objections for lack of standing, and petitioners sought partial summary relief on Counts I and II.                                                                                                             |
| STANDARD OF REVIEW    | For preliminary objections, the court generally considers the facts pleaded in the petition for review and reasonable inferences. Summary relief under Pennsylvania Rule of Appellate Procedure 1532(b) is appropriate only when no material facts are disputed and the applicant's right to judgment is clear. Constitutional provisions are construed according to their popular sense, and executive action is presumed constitutional unless clearly shown otherwise. |

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| <b>PRECEDENTIAL VALUE</b> | Published precedential opinion of the Commonwealth Court of Pennsylvania.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>PARTIES</b>            | Joseph B. Scarnati, Senator and President pro tempore of the Senate of Pennsylvania, Jake Corman, Senator and Majority Leader of the Senate of Pennsylvania, Jay Costa, Senator and Minority Leader of the Senate of Pennsylvania v. Tom Wolf, Governor of Pennsylvania, Randy Albright, Secretary of the Budget, Christopher Craig, Acting State Treasurer of Pennsylvania, Dennis M. Davin, Acting Secretary of Community and Economic Development, Cindy Adams Dunn, Acting Secretary of Conservation and Natural Resources, John Quigley, Acting Secretary of Environmental Protection, Curtis M. Topper, Acting Secretary of General Services, Kathy Manderino, Acting Secretary of Labor & Industry, James R. Joseph, Acting Adjutant General of Pennsylvania, Josh Shapiro, Chairman of the Pennsylvania Commission on Crime and Delinquency |

## TOPICS

constitutional law

appropriations

statutory interpretation

legislative intent

## PRACTICE AREAS

constitutional law

state government

legislative procedure

appropriations and budget law

standing

## QUESTIONS PRESENTED

1. Whether the senator-petitioners had legislative standing to challenge the Governor's veto-return process and line-item vetoes.
2. Whether the temporary adjournments of the House and Senate prevented the Governor from returning the bills with objections under Article IV, Section 15 of the Pennsylvania Constitution, thereby requiring filing with the Secretary of the Commonwealth and notice by public proclamation.
3. If public proclamation was required, whether the Governor's press release available on the Commonwealth's website satisfied that constitutional notice requirement.
4. Whether the 2014 Fiscal Code Amendments constituted a bill making appropriations of money, embracing distinct items, subject to the Governor's line-item veto authority under Article IV, Section 16.
5. Whether petitioners were entitled to partial summary relief on their claims that the Governor's line-item vetoes were unconstitutional.

## HOLDINGS

1. The senator-petitioners sufficiently alleged a substantial, direct, and immediate legislative interest because the challenged veto process allegedly interfered with the legislative enactment process, nullified their votes, and affected appropriations under their official control.

2. A temporary, mid-session adjournment of the General Assembly can prevent the Governor from returning a bill with objections to the originating chamber, but the record did not establish as a matter of law that the General Assembly, as opposed to only the House, had adjourned in a constitutionally relevant manner when the Governor returned the bills.
3. Assuming public proclamation was required, the Governor's timely press release issued by his office and made available on the Commonwealth's website satisfied Article IV, Section 15's notice requirement.
4. The 2014 Fiscal Code Amendments constituted a bill making appropriations of money, embracing distinct items, within Article IV, Section 16, and the Governor therefore had authority to disapprove individual appropriation provisions in that legislation.

## KEY QUOTATIONS

*“What emerges from this review . . . is the principle that legislators, as legislators, are granted standing to challenge executive actions when specific powers unique to their functions under the Constitution are diminished or interfered with.” (at 209)*

*“It is important to note that the Article IV, Section 15 adjournment, which will preclude the return of a bill with objections, is the adjournment of the General Assembly, not the adjournment of the house where the bill originated.” (at 219)*

*“Considering that the purpose of a public proclamation is to provide an official announcement to the public of matters of governmental import and that the method used should be sufficient to achieve broad publicity, we conclude that a public press release issued by the Office of the Budget, an administrative agency within the Governor’s office, and available on the Commonwealth’s website, satisfies the Constitutional requirement for notice by public proclamation.” (at 225)*

*“We agree there is no substantive distinction between the two; both involve an act of legislature authorizing a use of public funds for a particular purpose.” (at 238)*

## FACTUAL BACKGROUND

The Pennsylvania General Assembly enacted the 2014 General Appropriations Act and 2014 Fiscal Code Amendments. Former Governor Thomas Corbett approved the bills in part and disapproved or reduced specified appropriations and related provisions through line-item vetoes on July 10, 2014. The House had adjourned on July 9, the Senate had recessed on July 8, and the Governor delivered the bills and objections to the House Parliamentarian while also issuing a press release describing the vetoes. The General Assembly did not reconsider the disapproved items and ultimately adjourned sine die on November 12, 2014.

## PROCEDURAL HISTORY

Petitioners filed the action on November 4, 2014. The Commonwealth Court overruled respondents' preliminary objections, holding that the senator-petitioners had legislative standing, but denied petitioners' application for partial summary relief because unresolved factual issues existed concerning whether the General Assembly had adjourned in a manner that prevented return of the bills. The court also held that the Governor's press release would satisfy the public-proclamation requirement if that requirement applied and that the Fiscal Code Amendments were subject to the Governor's item-veto authority. An answer was ordered within thirty days.

## DISPOSITION

other

## REMAND INSTRUCTIONS

Respondents' preliminary objections were overruled, petitioners' application for partial summary relief was denied, and respondents were ordered to file an answer within thirty days.

## CASES CITED

- Corman v. National Collegiate Athletic Association, 74 A.3d 1149 (Pa. Cmwlth. 2013), reargument denied, 93 A.3d 1 (Pa. Cmwlth. 2014)
- Fumo v. City of Philadelphia, 972 A.2d 487 (Pa. 2009)
- Wilt v. Beal, 363 A.2d 876 (Pa. Cmwlth. 1976)
- Zemprelli v. Daniels, 436 A.2d 1165 (Pa. 1981)
- Jubelirer v. Pennsylvania Department of State, 859 A.2d 874 (Pa. Cmwlth. 2004), aff'd, 871 A.2d 789 (Pa. 2005)
- Okanogan Indian Tribe v. United States, 279 U.S. 655 (1929)
- Wright v. United States, 302 U.S. 583 (1938)
- Stroup v. Kapleau, 313 A.2d 237 (Pa. 1973)
- Mesivtah Eitz Chaim of Bobov, Inc. v. Pike County Board of Assessment Appeals, 44 A.3d 3 (Pa. 2012)
- Pottstown School District v. Hill School, 786 A.2d 312 (Pa. Cmwlth. 2001) (en banc)
- Dickinson, Auditor v. Page, Commissioner, 179 S.W. 1004 (Ark. 1915)
- Lapeyre v. United States, 84 U.S. 191 (1872)
- Commonwealth ex rel. Schnader v. Liveright, 161 A. 697 (Pa. 1932)
- Jubelirer v. Rendell, 953 A.2d 515 (Pa. 2008)
- Washington v. Department of Public Welfare, 71 A.3d 1070 (Pa. Cmwlth. 2013), aff'd, 76 A.3d 536 (Pa. 2013)
- Common Cause of Pennsylvania v. Commonwealth, 668 A.2d 190 (Pa. Cmwlth. 1995), aff'd, 677 A.2d 1206 (Pa. 1996)
- Hospital & Healthsystem Association of Pennsylvania v. Department of Public Welfare, 888 A.2d 601 (Pa. 2005)
- Shapp v. Sloan, 391 A.2d 595 (Pa. 1978) (plurality opinion)
- Patterson v. Dempsey, 207 A.2d 739 (Conn. 1965)
- County of Mercer v. Amundsen, 879 A.2d 366 (Pa. Cmwlth. 2005)
- Pennsylvania Environmental Defense Foundation v. Commonwealth, 108 A.3d 140 (Pa. Cmwlth. 2015), reargument denied February 3, 2015