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Received 10/23/2026 08:27 AM Commonwealth Court of Pennsylvania

Filed 10/23/2026 08:27 AM Commonwealth Court of Pennsylvania
441 MD 2026

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

KENNETH V. KRAWCHUK, *et al.*,	:	
	:	
Petitioners,	:	
	:	
v.	:	Docket No. 441 M.D. 2026
	:	
JOSHUA D. SHAPIRO, Governor of the Commonwealth of Pennsylvania, in his official capacity, *et al.*,	:	
	:	
Respondents.	:	

PRELIMINARY OBJECTIONS OF THE PRESIDENT *PRO TEMPORE* OF THE PENNSYLVANIA SENATE

K&L Gates LLP

October 23, 2026

/s/ Thomas R. DeCesar
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Counsel for Senator Kim Ward, President pro tempore of the Pennsylvania Senate

NOTICE TO PLEAD

Petitioners are hereby notified, under Pennsylvania Rule of Appellate Procedure 1516, to file a written response to the enclosed Preliminary Objections of Respondent within thirty (30) days from service hereof or a judgment may be entered against them.

/s/ Thomas R. DeCesar
Thomas R. DeCesar

RESPONDENT SENATOR KIM WARD'S, PRESIDENT *PRO TEMPORE* OF THE PENNSYLVANIA SENATE, PRELIMINARY OBJECTIONS TO THE PETITION FOR REVIEW

Pursuant to Pennsylvania Rules of Appellate Procedure 1516 and 1517, and Pennsylvania Rule of Civil Procedure 1028 (made applicable here by Pennsylvania Rule of Appellate Procedure 106), Respondent Senator Kim Ward, President *pro tempore* of the Pennsylvania Senate, preliminarily objects to the Petition for Review ("Petition") that was filed in this action on September 22, 2026, and states as follows.

1. The Petitioners in this case are current Libertarian gubernatorial candidate, Kenneth Krawchuk, and his wife, Roberta Krawchuk. The Petition is a legal pleading in name only – in truth, the document sets forth Mr. Krawchuk's policy preferences regarding Pennsylvania's system of public education, but does not adequately plead a cognizable legal claim against Respondent Senator Ward. The Petition should be dismissed for numerous reasons set forth below, and which will be further explained in briefing consistent with a briefing schedule set by the Court.

PRELIMINARY OBJECTION UNDER Pa.R.C.P. 1028(a)(5):
LACK OF STANDING

2. Petitioners are not challenging a particular statute, but rather the manner in which the system of public education in the Commonwealth of Pennsylvania is funded, created, and designed. Petitioners do not have standing to bring this lawsuit.

In particular, the Petitioners are not directly impacted by the alleged unconstitutional system, they do not meet the requirements of taxpayer standing, and they have no grounds to enforce the order from *William Penn Sch. Dist. v. Pennsylvania Dep't of Educ.*, 294 A.3d 537 (Pa. Cmwlth. 2023) ("*William Penn III*"). Standing is properly raised as a lack of capacity to sue under Pa.R.C.P. 1028(a)(5).

3. In order to establish standing in a matter, a party must show they have a "substantial, direct, and immediate interest" in the claim they are seeking to litigate. *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269, 282-83 (Pa. 1975). Petitioners assert they have standing because they are parents to three children and grandparents to two grandchildren who are former or current students in Pennsylvania's public school system. Petition ¶ 1. This connection to the claims they bring is not substantial, direct, or immediate. Indeed, Petitioners decline to identify who these individuals are, what school district they attend or attended, and when they attended. Petitioners do not assert that any of their children or grandchildren received a constitutionally deficient education. This does not suffice to establish Petitioners' standing to bring the claims in the Petition.

4. Petitioners also assert they have standing to challenge these matters because they are taxpayers in Pennsylvania and in a Pennsylvania school district. While taxpayer standing is recognized as a limited exception to traditional standing, it is only permitted under specific circumstances not present here. *See Application*

of Biester, 409 A.2d 848, 852 (Pa. 1979). In particular, a taxpayer has standing under *Biester* "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) (applying *Biester*). The Krawchuks fail to satisfy the elements of the *Biester* test. For instance, taking the factual assertions in the Petition as true, there would be a large group of people – students attending allegedly unconstitutional schools – who would allegedly be injured and better suited to bring this challenge instead of the Krawchuks. Moreover, there are other avenues available for redressing the issues raised by the Krawchuks – namely the legislative process. Therefore, Petitioners fail to establish the limited requirements of taxpayer standing.

5. Finally, Petitioners assert they are suing in an effort to enforce the Commonwealth Court's order from *William Penn III*, 294 A.3d 537. *See* Petition ¶¶ 17, 25, 32. The Krawchuks were not parties in that lawsuit, they are not among the groups of people identified in this Court's order in that case, and they identify no basis establishing standing to enforce a judgment to which they were not a party. *See William Penn III*, 294 A.3d at 964-65 (referring to students residing in low-wealth school districts). A judgment in another case does not apply to non-parties to the

case. Rather, a judgment is the "final determination of the rights and obligations of the parties in a case[.]" *ISN Bank v. Rajaratnam*, 83 A.3d 170, 176 (Pa. Super. 2013). Petitioners identify no basis for seeking to enforce the order from *William Penn III*. Moreover, even if the Krawchuks were the appropriate parties to enforce the order from that case, Petitioners fail to identify how Respondents in this case have failed to comply with that order. *See William Penn III*, 294 A.3d at 964-65.

PRELIMINARY OBJECTION UNDER Pa.R.C.P. 1028(a)(4): *RIPENESS*

6. The Petition for Review should be dismissed under Pa.R.C.P. 1028(a)(4) because it raises unripe issues. Ripeness is concerned with whether relevant facts are "sufficiently developed to permit judicial resolution of the dispute." *Robinson Twp., Washington Cty. v. Commw.*, 83 A.3d 901, 917 (Pa. 2013)). Petitioners seek a ruling that the system of public education in Pennsylvania is unconstitutional. Such a ruling was issued three years ago in 2023. *William Penn III*, 294 A.3d 537.

7. Since the ruling was issued (and, indeed, before it was issued), the General Assembly has taken significant steps directed to improving the system of public education in Pennsylvania. Most relevant to the issues raised in this case, the General Assembly has continued to increase school funding to lower wealth school districts, largely through the Ready to Learn Block Grant Program. *See* General Appropriation Act of 2024, Act of July 11, 2024, No. 1A; Fiscal Code Omnibus

Amendments, Act of July 11, 2024, P.L. 550, No. 54; General Appropriation Act of 2025, Act of Nov. 12, 2025, No. 1A; Fiscal Code Omnibus Amendments, Act of Nov. 12, 2025, P.L. 156, No. 45; General Appropriation Act of 2026, Act of July 12, 2026, No. 1A; Fiscal Code Omnibus Amendments, Act of July 12, 2026, P.L. 265, No. 21; Pennsylvania Department of Education, Education Budget (summarizing the 2026-27 and identifying that the 2026-27 fiscal year budget includes $1,948,481,000 for the Ready to Learn Block Grant) (available at https://www.pa.gov/agencies/education/programs-and-services/schools/grants-and-funding/school-finances/education-budget) (last visited October 19, 2026); *see also* Pennsylvania Department of Education, Historical Subsidy and Grant Information (identifying increase in Ready to Learn Block Grant program funding from $292,404,652 in the 2023-2024 fiscal year onward) (available at https://www.pa.gov/agencies/education/programs-and-services/schools/grants-and-funding/school-finances/financial-data/historical-subsidy-and-grant-information) (last visited October 19, 2026).

8. Any impact from these recent reforms, however, will not be evident immediately. Therefore, it is premature to assess their impact, and any claim challenging them is not ripe for review.

PRELIMINARY OBJECTION UNDER Pa.R.C.P. 1028(a)(4):
NON-JUSTICIABILITY

9. The claims brought in the Petition should be dismissed under Pa.R.C.P. 1028(a)(4) because they are based on Petitioners' personal educational policy preferences, and, therefore, are non-justiciable.

10. While the Pennsylvania Supreme Court determined in *William Penn Sch. Dist. v. Pennsylvania Dep't of Educ.*, 642 Pa. 236, 306, 170 A.3d 414, 457 (2017) ("*William Penn II*"), that claims under the education clause can potentially set forth a justiciable cause of action, that does not mean the court system is the appropriate place to decide educational policy. Indeed, the Pennsylvania Supreme Court has previously held otherwise. *Malone v. Hayden*, 197 A. 344, 352 (Pa. 1938) ("In considering laws relating to the public school system, courts will not inquire into the reason, wisdom, or expediency of the legislative policy with regard to education.").

11. The Petition seeks an injunction under which the Court will direct the General Assembly to pass laws consistent with Petitioners' policy preferences in a way that would entirely change the Commonwealth's system of education. For instance, Petitioners ask the Court to require the General Assembly to pass legislation dissolving all local school boards, selling all school buildings, creating the Pennsylvania Scholastic Standards Board to develop a standardized curriculum and standardized exams in each subject, and creating a state-subsidized Education

Savings Account program for all Pennsylvania students. Petition ¶¶ 29-32 (seeking injunctive and declaratory relief); Petition, Prayer for Relief ¶¶ E-H (same).

12. The relief requested by Petitioners goes far beyond the appropriate scope of an Education Clause claim as permitted by the Supreme Court. *See William Penn II*, 170 A.3d 414; *Malone*, 197 A. at 352. The Court should therefore hold that the challenge brought by the Krawchuks is non-justiciable. Because the Counts in the Petition are non-justiciable, they are not claims upon which relief may be granted and this Court lacks jurisdiction to adjudicate them. *See, e.g., Maurer v. Boardman*, 7 A.2d 466, 472-73 (Pa. 1939) ("There is no appeal to the courts from the judgment of the legislature as to the wisdom or policy which the Commonwealth shall adopt."); *see also Cella v. Davidson*, 156 A. 99, 100 (Pa. 1931) ("A court of equity cannot acquire and retain jurisdiction of matters not justiciable before it[.]").

PRELIMINARY OBJECTION UNDER Pa.R.C.P. 1028(a)(4):
SEPARATION OF POWERS

13. The Petition asks the Court to issue an injunction directing Respondents to enact certain legislation. *See* Petition ¶ 5 ("the relief sought . . . can be enacted only by statute."); Petition ¶¶ 29-32 (seeking injunctive and declaratory relief); Petition, Prayer for Relief ¶¶ E-H (same).

14. It would be a violation of separation of powers principles for the Court to grant the requested injunctive relief. *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."); *see also Shapp v. Sloan*, 367 A.2d 791, 797 (Pa. Cmwlth. 1976) ("role of the General Assembly and its political accountability for legislative action was and is, in our opinion, the intent of our forefathers in vesting exclusive legislative power in the General Assembly subject only to gubernatorial veto and judicial scrutiny as to the constitutionality of enacted legislation").

15. Accordingly, to the extent the Petition seeks injunctive relief directing the Respondents or General Assembly to enact certain legislation, the Petition should be dismissed for violating Separation of Powers principles.

PRELIMINARY OBJECTION UNDER Pa.R.C.P. 1028(a)(4):
SOVEREIGN IMMUNITY

16. The General Assembly and officials within the General Assembly, including Respondent Senator Ward, President *pro tempore* of the Pennsylvania Senate, are immune from suit except where they have specifically waived immunity. *See* 1 Pa.C.S. § 2310; 42 Pa.C.S. § 8521. This immunity extends to equitable actions. *Philadelphia Life Ins. Co. v. Com.*, 190 A.2d 111, 113 (Pa. 1963). In particular, "[s]uits which seek to compel *affirmative action on the part of state officials* . . . are within the rule of immunity[.]" *Id.* at 114.

17. As noted above, in the Petition, Petitioners seek an injunction directing Respondents to enact certain legislation and compelling wholesale affirmative changes to Pennsylvania's education system. *See* Petition ¶ 5 ("the relief sought . . .

can be enacted only by statute."); Petition ¶¶ 29-32 (seeking injunctive and declaratory relief); Petition, Prayer for Relief ¶¶ E-H (same). No matter how Petitioners style their request, its practical effect is what matters, and that effect is to force the General Assembly into specific, affirmative conduct.

18. The General Assembly has not waived sovereign immunity for the mandatory affirmative relief Petitioners seek. Therefore, the requested injunctive relief violates principles of sovereign immunity and should be dismissed.

PRELIMINARY OBJECTION UNDER Pa.R.C.P. 1028(a)(1) & (a)(5):
FAILURE TO JOIN NECESSARY PARTIES

19. Under Pennsylvania law, "[a] party is indispensable when he has such an interest that a final decree cannot be made without affecting it, or leaving the controversy in such a condition that the final determination may be wholly inconsistent with equity and good conscience." *Van Buskirk v. Van Buskirk*, 590 A.2d 4, 7 (Pa. 1991) (internal quotation omitted). "The failure to join an indispensable party deprives the court of subject matter jurisdiction." *Church of the Lord Jesus Christ of the Apostolic Faith v. Shelton*, 740 A.2d 751, 755 (Pa. Cwmlth. 1999).

20. Petitioners seek an order from the Court requiring the passage of legislation that would dissolve all Pennsylvania school boards, transfer all school district assets and liabilities to the Commonwealth, and sell all school buildings. Petition ¶ 30; Petition, Prayer for Relief ¶ E; Petition, Exhibit C (detailing Petitioners

plan to dissolve all school boards and sell all schools). The relief requested in the Petition would facially impact every school district in Pennsylvania, along with various other educational institutions. Despite the measures Petitioners ask this Court to impose, they have not named any Pennsylvania school district or any other educational institution as a Respondent. *See generally* Petition.

21. Because Petitioners have failed to name various indispensable parties – namely the public school districts and other educational institutions that would be directly affected by Petitioners' requested relief – the Petition should be dismissed for lack of subject matter jurisdiction, or alternatively under Pennsylvania Rule of Civil Procedure 1028(a)(5) for failure to join necessary parties.

PRELIMINARY OBJECTION UNDER Pa.R.C.P. 1028(a)(4):
FAILURE TO STATE A CLAIM FOR RELIEF

22. A court should grant a preliminary objection in the nature of a demurrer when, assuming all well-pleaded facts in the pleading to be true, the pleading nonetheless fails to state a claim for which relief may be granted as a matter of law. *See Weiley v. Albert Einstein Medical Center*, 51 A.3d 202, 208-09 (Pa. Super. 2012). In evaluating such preliminary objections, the court is not to take as true any legal conclusions in the complaint. *See Commonwealth ex rel. Corbett v. Peoples Benefit Services, Inc.*, 895 A.2d 683, 696-97 (Pa. Cmwlth. 2006). "Pennsylvania is a fact-pleading jurisdiction[,]" meaning that a pleading must "not only give the defendant notice of what the plaintiffs' claim is and the grounds upon which it rests,

but it must also formulate the issues by summarizing those facts essential to support the claim." *Sevin v. Kelshaw*, 611 A.2d 1232, 1235 (Pa. Super. 1992) (internal citations omitted).

23. The Petition is almost entirely devoid of facts explaining why Petitioners believe the system of education violates the Pennsylvania Constitution. Petitioners only point to three items: recent standardized test scores; trends in administrative and professional staffing; and allegations regarding a lack of curriculum standards and/or oversight. Even if the well-pleaded facts in the Petition are accepted as true, the Court would, as a matter of law, be unable to find that Pennsylvania's system of education is constitutionally deficient based on the allegations made by Petitioners.

24. In their Petition, Petitioners rely almost exclusively on a rough explanation that recent student test scores are low overall and lower in less wealthy school districts. The Pennsylvania Supreme Court has already explained that it would be inappropriate to simply "constitutionalize whatever standards," are in place currently. *William Penn II*, 170 A.3d at 450. Therefore, simply looking at state standardized exam scores, which are designed to test Pennsylvania's standards, is insufficient. Even accepting Petitioners' claims about test scores as true, a particular level of test scores does not amount to an unconstitutional system of education. *Id.*

25. In addition, Petitioners point out that, over the last quarter century, the number of school staff has increased by about 6-10% and non-teacher professional staff has increased by about 40-47%. Petition for Review, Ex. B. Meanwhile, enrollment in public schools has decreased. Therefore, over the last 25 years, "student-to-professional-staff ratios have declined significantly (more staff per student)." *Id.* For unexplained reasons, Petitioners apparently assert this is detrimental to the public school system. In *William Penn III*, the Commonwealth Court noted that a "component of a thorough and efficient system of public education about which there appears to be no dispute involves teachers, specifically sufficient, well-trained, and experienced ones." *William Penn III*, 294 A.3d at 916.

26. Petitioners' allegation that the number of teachers and administrative staff has increased overall does not support a finding that the system of public education violates the Pennsylvania Constitution.

27. Finally, Petitioners assert that Pennsylvania lacks curriculum standards or oversight. Petition for Review ¶ 15. This allegation relates to a legal issue, rather than an issue of fact, and the Court is not required to accept it as true. *See Commonwealth ex rel. Corbett*, 895 A.2d 683, 696-97 (Pa. Cmwlth. 2006). These legal allegations are demonstrably incorrect. Contrary to Petitioners' claims, the State Board has issued at least fifteen sets of academic curriculum standards in various subject matters. *See* State Board of Education, State Academic Standards

(available at https://www.pa.gov/agencies/stateboard/resources/regulations--policy/state-academic-standards). The Pennsylvania Code requires that Pennsylvania School Districts make educational programs designed to provide for the attainment of these academic standards. *See* 22 Pa. Code § 4.12(b).

28. In sum, even if the factual allegations made by Petitioners are correct, they would not amount to an unconstitutional system of public education.

PRELIMINARY OBJECTION UNDER Pa.R.C.P. 1028(a)(3):
INSUFFICIENT SPECIFICITY OF PLEADING

29. To the extent the Court concludes that Petitioners' claims regarding their children and grandchildren may be sufficient to satisfy traditional standing, the Court should still dismiss the Petition under Pennsylvania Rule of Civil Procedure 1028(a)(3) because it fails to plead material facts regarding Petitioners' children and grandchildren, and fails to identify any present, individualized injury. As noted, Petitioners do not identify their children or grandchildren, the schools attended by their children and grandchildren (currently or in the past), how their children or grandchildren were allegedly injured by Pennsylvania's system of public education, or any other details relevant to how the Petitioners were impacted by the alleged constitutional deficiencies they identify in the Petition.

CONCLUSION

Accordingly, for the reasons stated, the Petition for Review should be dismissed with prejudice as to all claims, and the Court should provide for such other relief as the Court deems just and appropriate.

Respectfully submitted,

October 23, 2026

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Counsel for Senator Kim Ward, President pro tempore of the Pennsylvania Senate

CERTIFICATION OF COMPLIANCE

I hereby certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Thomas R. DeCesar
Thomas R. DeCesar

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121:

Service by PACFile eService as follows:

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

/s/ Thomas Richard DeCesar

(Signature of Person Serving)

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	:	
Respondents.	:	

PRAECIPE FOR ENTRY OF APPEARANCES

To the Prothonotary:

Pursuant to Pennsylvania Rule of Appellate Procedure 120, please enter our appearances on behalf of Respondent Kim Ward, President *pro tempore* of the Pennsylvania Senate.

Papers may be served at the address set forth below.

Respectfully submitted,

October 23, 2026

/s/ Thomas R. DeCesar

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Counsel for Respondent Governor Joshua D. Shapiro

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/s/ Thomas Richard DeCesar

(Signature of Person Serving)

Person Serving:	DeCesar, Thomas Richard
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