

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

LEAGUE OF WOMEN VOTERS OF
PENNSYLVANIA, et al.,
Petitioners,

v.

COMMONWEALTH OF
PENNSYLVANIA, et al.,
Respondents.

Docket No. 261 MD 2017

[PROPOSED] ORDER

AND NOW, this _____ day of _____, 2017, upon consideration of Respondent Governor Tom Wolf's Preliminary Objections to Petition for Review, and any response thereto, it is hereby ORDERED that Respondent's Preliminary Objections are SUSTAINED, and Governor Wolf is DISMISSED as a party.

BY THE COURT:

, J.

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Docket No. 261 MD 2017

NOTICE TO PLEAD

TO: Michael Churchill
Benjamin D. Geffen
Mary M. McKenzie
THE PUBLIC INTEREST LAW CENTER
1709 Benjamin Franklin Parkway, 2nd Floor
Philadelphia, PA 19103

You are hereby notified to file a written response to these Preliminary Objections within thirty (30) days from service hereof or a judgment may be entered against you.

Respectfully submitted,

DATE: August 10, 2017

By: /s/Thomas P. Howell

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Governor of Pennsylvania*

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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**PRELIMINARY OBJECTIONS OF RESPONDENT GOVERNOR TOM
WOLF TO PETITION FOR REVIEW**

Respondent Tom Wolf, the Governor of Pennsylvania, by and through his undersigned counsel, hereby raises Preliminary Objections to the Petition for Review filed in the above-captioned case pursuant to Pennsylvania Rule of Appellate Procedure 1516(b) and Pennsylvania Rule of Civil Procedure 1028(a)(4). In support of his Preliminary Objections, Respondent Wolf alleges as follows:

Background

1. On June 15, 2017, Petitioners filed the Petition for Review in the instant matter, invoking this Honorable Court's original jurisdiction. *See* Petition ¶ 41.
2. Petitioners challenge the constitutionality of the legislative apportionment of congressional districts in Pennsylvania, which was proposed in the General Assembly as Senate Bill 1249 of 2011 (SB1249), and enacted as Act 131 of

2011 (Act of Dec. 22, 2011, P.L. 598, No. 131) (hereinafter, “Act 131”). Specifically, Petitioners allege that Act 131 violates the free expression and association, equal protection and free and equal clauses of the Pennsylvania Constitution.

3. Act 131 was signed into law on December 22, 2011 by then-Governor Thomas W. Corbett. *See*, Act 131 of 2011 (Act of Dec. 22, 2011, P.L. 598, No. 131), *as amended*, 25 P.S. § 3596.101 *et seq.*

4. Governor Wolf was elected in November 2014 and inaugurated on January 20, 2015 (over three years after the passage of Act 131), and had no role in the enactment of Act 131.

5. Governor Wolf is not charged with any statutory or constitutional duties with respect to the enforcement or administration of Act 131.

6. Petitioners name Governor Wolf as a Respondent in his official capacity only, asserting that “Governor Wolf is responsible for signing bills into law as well as the faithful execution of [Act 131].”

7. Petitioners make no further allegations regarding Governor Wolf, and seek no relief against him. *See* Petition, ¶¶ 50-51 (Prayer for Relief).

**Preliminary Objection of Respondent Governor Wolf - Legal
Insufficiency of the Pleading/Failure to State a Claim (Demurrer),
Pa.R.C.P.1028(a)(4)**

8. Paragraphs 1-7 above are reincorporated by reference as if fully set forth herein.

9. The caption of the Petition and paragraph 35 of the Petition identify Governor Wolf as a respondent in his official capacity only.

10. The sole averment that mentions Governor Wolf is paragraph 35 which alleges that Governor Wolf “is responsible for signing bills into law as well as the faithful execution of [Act 131].” *See* Petition, ¶ 35.

11. The Petition does not allege any facts to support a claim that Governor Wolf plays *any* role in enforcing or administering Act 131, or even had any role in its enactment.

12. As Petitioners themselves aver, the General Assembly, rather than the Governor, is charged with establishing the boundaries of congressional districts, and “would be responsible for implementing the relief Petitioners seek.” Petition, ¶ 34.

13. As a matter of law, Act 131 does not vest any powers or duties of administration or enforcement of its provisions in the Office of the Governor. In fact, Act 131 does not impose any obligation on the Governor at all. *See* 25 P.S. § 3596.101 *et seq.*

14. None of the averments of the Petition allege any action or inaction by Governor Wolf that could be deemed to provide a cause of action against him.

15. The Governor's general obligation to "faithfully execute" the laws or sign legislation into law is insufficient to render the Governor a proper respondent. *See, e.g., Pa. School Boards Ass'n, Inc. v. Commonwealth Ass'n of Sch. Adm'rs.*, 696 A.2d 859, 868 (Pa. Cmwlth. Ct. 1997) (challenge to constitutionality of a statute does not render the Governor proper defendant), *appeal dismissed*, 704 A.2d 631 (Pa. 1998); *Rode v. Delarciprete*, 845 F.2d 1195, 1208-09 (3d Cir. 1988) (same).

16. The relief sought by the Petitioners can be ordered against the government unit respondents and therefore the Governor is not an indispensable party who must be named. *See Pa.R.A.P. 1513(b)* ("Where a public act or duty is required to be performed by a government unit, it is sufficient to name the government unit, and not its individual members, as respondent.").

17. Without a substantive allegation against Governor Wolf, the Petition is legally insufficient against Governor Wolf. *See Wagaman v. Attorney General*, 872 A.2d 244, 247 (Pa. Cmwlth. Ct. 2005).

18. Without a substantive allegation against Governor Wolf, there exists no legal claim or controversy between Governor Wolf and the Petitioners.

19. The existence of a case or controversy requires: (1) a legal controversy that is real and not hypothetical, (2) a legal controversy that affects an individual in

a concrete manner so as to provide the factual predicate for a reasoned adjudication, and (3) a legal controversy with sufficiently adverse parties so as to sharpen the issues for judicial resolution. *Id.* (citing *Dow Chem. Co. v. United States Env'tl. Prot. Agency*, 605 F.2d 673, 678 (3d Cir. 1979)).

20. In the absence of such case or controversy, a case should be dismissed as moot. *Mistich v. Comm., Pa. Bd. of Probation and Parole*, 863 A.2d 116, 119 (Pa. Cmwlth. Ct. 2004).

21. Because Governor Wolf has no role in the administration or enforcement of Act 131, there exists no case or controversy between Governor Wolf and the Petitioners.

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WHEREFORE, for the reasons above, Petitioners fail to state any legal claim or identify any case or controversy against Respondent Governor Wolf, and Governor Wolf respectfully requests dismissal of the Petition against him.

Respectfully submitted,

DENISE J. SMYLER
General Counsel

Date: August 10, 2017

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CERTIFICATE OF SERVICE

I, THOMAS P. HOWELL, hereby certify that on this 10th day of August 2017, the foregoing **Preliminary Objections of Respondent Governor Tom Wolf to Petition for Review** has been served upon counsel in the manner indicated below, which service satisfies the requirements of Pennsylvania Rule of Appellate Procedure 121:

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