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**Constitutional Law — Equal Protection Clause — Prohibition of Special Laws — Education Empowerment Act** — The Pennsylvania Supreme Court held that Act 91 of the Education Empowerment Act, which provides for mayoral control of failing school districts in select urban areas, does not violate the Equal Protection Clause of the United States Constitution or the prohibition of special laws under Article III, Section 32 of the Pennsylvania Constitution, because the legislature had a rational basis for the classification and the class had the potential of containing more than one member.


Pennsylvania’s Education Empowerment Act (hereinafter “EEA”) permits the mayor to take control of failing school districts in medium-sized cities. The EEA requires the Department of Education to place a school with a history of low test scores on the Education Empowerment List (hereinafter “List”). The placement of a school district on the List is the initial step in a three

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2. Zogby, 828 A.2d at 1081. The test used for list qualification is the Pennsylvania System of State Assessment (PSSA). Harrisburg v. Hickok (Hickok II), 781 A.2d 221 (Pa. Commw. Ct. 2000). Once a school has been placed on the List, the district must name an “empowerment team” to work with the Department of Education to develop an improvement plan. Zogby, 828 A.2d at 1081. “In implementing the plan, the school board may, *inter alia*, replace district administrative personnel (including the superintendent), establish charter school or privately-run schools, and reallocate resources within the district.” *Id.* The district must file annual reports about the implementation plan with the Department. *Id.* Once the district demonstrates improvement and reaches the goals of the implementation plan, the Department will remove it from the list. *Id.* at 1082.
year recovery plan. However, some urban school districts that fall within certain criterion will bypass the List and be subjected to an expedited plan. In these districts, the mayor of the city in which the district resides will appoint a board of control to replace the existing school board. The mayor will also name an empowerment team to develop a recovery plan for the district, which must be submitted to the Department of Education for modification and approval. A district that has been subjected to mayoral control will remain under the mayor’s authority for at least five years.

The potential class of districts for mayoral control was expanded by the EEA’s Act 91 Amendment, which was passed in the Pennsylvania legislature in 2000. Originally, the highly specialized criterion listed in Act 16 of the EEA only included the Harrisburg school district as a potential member of the class. In Harrisburg v. Hickok (Hickok I), Harrisburg School District had brought an

3. Zogby, 828 A.2d at 1082. If the district fails to achieve the goals of the implementation plan within three years, the Department will certify the district as an “education empowerment district” and will set up a board of three members to control the district. Id. at 1081-82. The board will be comprised of the Secretary of Education or his appointee and two residents from the district’s county. Id. Once test scores improve and the goals of the plan are met, the local school board will reassert control of the district. Id. at 1082.

4. Id. Act 91 defines which districts will be subjected to the expedited plan. Id. at 1083. See infra note 9 for the legislative history of Act 16, Act 91’s predecessor.

5. Id. at 1082. The board will consist of five members, chosen solely at the mayor’s discretion. Id.

6. Id.

7. Id. After five years, if a district has improved the failing test scores and met the goals of the implementation plan, control will be returned to the local school board. Id.

8. Zogby, 828 A.2d at 1083.

9. Id. at 1083. Act 16 defined a potential school district for mayoral control as “a school district of the second class with a history of low test performance which is coterminous with the city of the third class which contains the permanent seat of government.” 24 PA. CONS. STAT. § 17-1707-B (2000); Harrisburg v. Hickok (Hickok II), 781 A.2d 221 (Pa. Commw. Ct. 2001). Act 16 is commonly referred to as the Reed Amendment, named after the Harrisburg Mayor, Stephen Reed. Hickok II, 781 A.2d at 224. Act 16 originated as Senate Bill 652 (SB652), entitled “An Act Amending the Act of March 10, 1949, P.L. 30” (the Public School Code of 1949, 24 PA. CONS. STAT. §§ 1-101–27-2703). Harrisburg v. Hickok (Hickok I), 762 A.2d 398, 400 (Pa. Commw. Ct. 2000). Despite the title, the original bill only proposed one new section and one amendment to the School Code. Hickok I, 762 A.2d at 400-01. Following two rounds of amendments, not relevant to the present case, the bill was passed by the House of Representatives on June 16, 1999. Id. at 401. The Bill was returned to the Senate, then referred to the Committee on Rules and Executive Nominations. Id. Bill 653 was passed in the Senate on May 2, 2000, after receiving further amendments from the Senate Rules Committee. Id. Back in the House, the Bill was referred to the House Rules Committee, where substantial new material was added, including the new article to the School Code entitled the “Education Empowerment Act” (EEA). Id. On May 3, 2000, Bill 652 was passed in the House, and the Senate concurred. Id. The governor signed the bill on May 10, 2000. Id.
action, similar to the present case, challenging the constitutional-
ity of Act 16.10 The Commonwealth Court had granted the school
district’s request for a preliminary injunction, and the Supreme
Court affirmed.11 One week before the Supreme Court released
their opinion, the General Assembly amended Act 16 in an appar-
ent response to the Commonwealth Court’s order.12 Act 91 embod-
ies the amended Act 16.13

Act 91 defines the class of potential districts for mayoral control
more broadly than its predecessor, Act 16.14 Four districts in the
Commonwealth have the potential for mayoral control: Harris-
burg, Erie, Allentown, and Reading.15

In December 2000, the Harrisburg School District, Harrisburg
School Board, and individual petitioners filed a complaint seeking
to have Act 91 (the amended Act 16) declared unconstitutional.16
The action, Harrisburg v. Hickok (Hickok II), was a petition for
review in the form of a complaint in equity, which sought a de-
claratory judgment and named the Secretary of Education, the
Mayor of Harrisburg, and potential members of the mayor-
appointed board as defendants.17 The case name was later
amended to Harrisburg v. Zogby, reflecting Secretary of Education
Eugene Hickok’s replacement, Charles B. Zogby.18 The complaint
alleged the following: first, Act 91 violated the Equal Protection
Clause of the United States Constitution; second, Act 91 violated
the prohibition of special laws contained in Article III, Section 32
of the Pennsylvania Constitution; third, Act 91 improperly
changed the form of Harrisburg’s government; fourth, Act 91
impermissibly granted the mayor-appointed board taxing power;
and finally, Act 91 unconstitutionally removed the functioning

and accompanying text.
11. Hickok I, 761 A.2d at 1136.
13. Id. at 1086.
14. Id.
15. Id. at 1084. 24 P.S. § 17-1707-B(a.1.). The Act defines a district that is eligible for
mayoral control as “a school district of the second class which has a history of extraordinar-
ily low test performance, which is coterminous with a city of the third class that has opted
under the ‘Optional Third Class City Charter Law’ or 53 Pa.C.S. Pt. III Subpt. E to be gov-
erned by a mayor-council form of government and which has a population in excess of forty-
five thousand (45,000) . . . ” Zogby, 828 A.2d at 1083.
16. Id.
17. Zogby, 828 A.2d at 1083-84. The plaintiffs also requested a preliminary injunction,
which the trial court denied. Id. at 1084. The Harrisburg School District withdrew from
the case in December of 2001. Id. at 1084 n.6.
18. Id. at 1084 n.7.
school board.\textsuperscript{19} The public officials filed preliminary objections to all five counts; the Commonwealth Court overruled the objections on Counts I, II, and III, but it sustained the objections as to Counts IV and V.\textsuperscript{20}

The Commonwealth Court found Act 91 to be unconstitutional, holding that no real distinctions were apparent for the creation of the class.\textsuperscript{21} The defendant public officials argued that the classification was a rational one, reasonably related to a state objective, because the classification was based on test scores.\textsuperscript{22} Harrisburg responded that no rational reason could exist for the classification since the General Assembly had created the class in such a narrow fashion.\textsuperscript{23} Judge Pelligrini, writing for the majority, stated that in order for the public officials to prevail, the class must not be closed and must be based on genuine distinctions.\textsuperscript{24} The Commonwealth Court stated:

The number and oddness of the distinctions that mix and match a class of school with a particular subclass of a third class city that itself is a particular subclass of a home rule municipality that is further narrowed by a population classification that itself is a subclass of a population classification used to determine classes of city indicates that the object of the legislation was to winnow down the number of school districts so that it would apply to a very, very, very small number. While that, in and of itself, does not make the legislation violative of Article III, Section 32's prohibition against special legislation, the absence of any apparent 'rhyme or reason' for the factors used indicates that they were artificial and irrelevant to remedying the situation in districts with 'extraordinarily low [test] scores.'\textsuperscript{25}

Additionally, the Commonwealth Court could not comprehend why only the narrow class of Harrisburg would be the sole district requiring expedited mayoral control, "when the situation would be

\textsuperscript{19} Hickok II, 781 A.2d at 224.
\textsuperscript{20} Zogby, 828 A.2d at 1084. As to Counts IV & V, the Commonwealth Court held that the school board retained their tax-levying power and offices even though their powers had been affected. \textit{id}.
\textsuperscript{21} Hickok II, 781 A.2d at 230.
\textsuperscript{22} \textit{id}. at 226.
\textsuperscript{23} \textit{id}. at 227.
\textsuperscript{24} \textit{id}. at 227-28.
\textsuperscript{25} \textit{id}. at 228.
just as grave for all students in all extraordinarily failing districts to warrant an immediate takeover.\textsuperscript{26} Moreover, the court held that a label of “pilot program” could not be used to circumvent Article III, Section 32’s prohibition against special laws.\textsuperscript{27}

Judge Leadbetter filed a dissenting opinion, stating that he found no denial of equal protection principles or violation of Pennsylvania’s Constitution by Act 91.\textsuperscript{28} He opined that the General Assembly had enacted the EEA in response to the growing problem of failing districts throughout the Commonwealth.\textsuperscript{29} Furthermore, the dissenting opinion declared that Act 91 provided “a specialized remedy” for Harrisburg, which was “specifically tailored both to the educational problems of the district and to the particular form of government of the City and the district.”\textsuperscript{30} Declaring Act 91 to be a pilot program modeled after promising programs in other states, Judge Leadbetter believed the act was a rational legislative response to failure in the Commonwealth’s education program.\textsuperscript{31}

Subsequently, Harrisburg School District moved for judgment on the pleadings on the remaining Counts I, II, and III.\textsuperscript{32} The Commonwealth Court granted the motion, and the defendants appealed.\textsuperscript{33}

On direct appeal, the Pennsylvania Supreme Court reversed the decision of the Commonwealth Court.\textsuperscript{34} The court considered whether Act 91 of the EEA violated either the Equal Protection Clause of the United States Constitution or the prohibition of special laws under the Pennsylvania Constitution and whether Act 91 improperly changed the form of Harrisburg’s government.\textsuperscript{35} The

\textsuperscript{26} Hickok II, 781 A.2d at 228.
\textsuperscript{27} Id. at 229.
\textsuperscript{28} Id. at 239 (Leadbetter, J., dissenting). Judge Kelley also filed an opinion, concurring in part and dissenting in part. Id. at 236 (Kelley, J, concurring in part, dissenting in part). However, her dissent only addressed the taxation issues of Count IV and V which were not considered in Harrisburg v. Zogby, which were not considered on appeal to the Supreme Court of Pennsylvania. Id.
\textsuperscript{29} Id. at 239 (Leadbetter, J., dissenting).
\textsuperscript{30} Id. (Leadbetter, J., dissenting).
\textsuperscript{31} Hickok II, 781 A.2d at 239 (Leadbetter, J., dissenting).
\textsuperscript{33} Zogby, 828 A.2d at 1081.
\textsuperscript{34} Id. at 1093.
\textsuperscript{35} Id. The direct appeal was taken pursuant to 42 PA. CONS. STAT. § 723(a) which provides that “[t]he Supreme Court shall have exclusive jurisdiction of appeals from final orders of the Commonwealth Court entered in any matter which was originally commenced in the Commonwealth Court except an order entered in a matter which constitutes an
majority found that the class created by Act 91 was not “based upon artificial or irrelevant distinctions utilized merely to evade the constitutional prohibition on special legislation,” but rather was “a classification which is reasonably related to the Commonwealth’s legitimate interest in, and the General Assembly’s constitutional duty to ensure, the existence of a thorough and efficient system of public education.” Thus, the court held that Act 91 did not violate the Equal Protection Clause of the United States Constitution or Article III, Section 32 of the Pennsylvania Constitution. Additionally, the court held that Act 91 did not change the form of Harrisburg’s government, and therefore was not in violation of Article IX, Section 3 of the Pennsylvania Constitution.

Before addressing the specific issues on appeal, Justice Saylor, writing for the majority, examined the similar purposes served by the Equal Protection Clause and Article III, Section 32 of the Pennsylvania Constitution. The Pennsylvania Supreme Court has held that the purpose of both constitutional provisions is to “reflect the principle that like persons in like circumstances must be treated similarly.”

36. Zogby, 828 A.2d at 1091 (internal citations omitted). See also Hickok I, which held that if a legislature has real and relevant purposes for the distinctions used to create a class, the class will be upheld. Hickok I, 761 A.2d at 1136.

37. Zogby, 828 A.2d at 1091.

38. Id. at 1093.

39. Id. at 1088-89.

40. Zogby, 828 A.2d at 1088 (citing DeFazio v. Civil Serv. Comm’n of Allegheny County, 756 A.2d 1103, 1105-06 (Pa. 2000)).

41. Zogby, 828 A.2d at 1088. See also Tool Sales & Serv. Co. v. Commonwealth 637 A.2d 607 (Pa. 1993) (holding that the analysis to be applied in determining the reasonableness of classifications under art. III, § 32 of the Pennsylvania Constitution and the Equal Protection Clause of the United States Constitution are the same). But see Robert F. Williams, Continuing Developments in State Constitutional Law, 74 TEMP. L. REV. 573 (2001), for a discussion of the Pennsylvania Supreme Court’s treatment of equality concerns under the Pennsylvania Constitution as identical to federal Equal Protection issues even though each equality provision of the Pennsylvania Constitution is different from the federal Equal Protection Clause in text, history, and meaning. Id. at 576. In addition to Art. III, § 32, Art. I, § I (“All men are born equally free and independent . . . “); Art. I, § 26 (“neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.”); and Art. VIII, § 1 (“All taxes shall be uniform . . . ”) are also interpreted by the Pennsylvania Supreme Court as though they were identical to the Equal Protection Clause of the Fourteenth Amendment. Id.
similar as to warrant simultaneous analysis for both constitutional issues. The court first considered whether the Act 91 criterion, which limits the potential schools for mayoral control to only four districts, constituted a special law. The court reasoned that the prohibition against special laws had been included in the Pennsylvania Constitution to prevent privileged legislation for specific locales. The majority stated that the "underlying purpose of Section 32's prohibition on special legislation was not so much to prohibit the General Assembly from undertaking limited, remedial measures as part of a long-term strategy to fulfill its duties connected with the public interest but [rather] to end the practice of favoritism." Additionally, the court acknowledged that equal protection principles do not vitiate the Legislature's power to classify, even if that classification seems discriminatory on its face. The court stated that differential treatment of persons with differing needs will not be found unconstitutional as long as the differential treatment has a reasonable relationship to a legitimate state purpose. The majority recognized that a reviewing court has the latitude to hypothesize the legislative purpose for the differential treatment when determining whether the differential treatment is reasonably related to a state purpose.

Applying this rationale to the facts of the present case, Justice Saylor noted that the General Assembly was permitted to classify school districts and cities based on population because legislation based on such a classification was deemed to be general, not special. The court found the General Assembly limitation of the class to a few cities, which had all chosen a mayor-council form of government under the Charter Law, to be reasonable. The class had additionally been limited to cities in which the mayor would

42. Zogby, 828 A.2d at 1088. See also DeFazio, 756 A.2d at 1105 (holding that "the underlying purpose of [PA. CONST. art III, § 32] is analogous to the Equal Protection Clause of the U.S. Constitution, and the analysis and interpretation of the clause should be guided by the same principles that apply in interpretation of federal equal protection).

43. Zogby, 828 A.2d at 1087-88.

44. Id. "In the seven years before the Constitution of 1874 was adopted the General Assembly enacted 8,755 local or special acts and only 475 general laws." ROBERT E. WOODSIDE, PENNSYLVANIA CONSTITUTIONAL LAW 321 (1985).

45. Zogby, 828 A.2d at 1088.

46. Id. at 1088-89

47. Id.

48. Id. at 1089.

49. Id. at 1089-90.

50. Zogby, 828 A.2d at 1090.
share the local electorate with the school board. The court stated that this condition had the "benefit of providing the individual who retains ultimate authority over the board of control (i.e., the mayor) with the greatest political incentive to ensure that effective means are implemented to improve the performance of the school district involved." Additionally, Justice Saylor presumed that the General Assembly most likely desired to limit the mayor pilot program to a few districts until it became more apparent that the expedited mayor control board would be effective. Furthermore, the court stated that the Legislature was free to ratify social programs incrementally until the program's success was documented. Thus, the court concluded that Act 91 could not be classified as special legislation; therefore, it was not in violation of equal protection principles.

Next, the court considered whether Act 91 improperly expanded the power of Harrisburg's mayor absent the approval of the Harrisburg voters. The Charter Law specifically grants the mayor power to enforce "all general laws applicable thereto." The majority reasoned that any city that adopts a mayor-council form of government under Charter Law is endorsing not only local ordinances, but also general laws enacted by the General Assembly. Additionally, Justice Saylor wrote that the powers granted to the mayor under the Charter Law were not an exhaustive list of mayoral duties, but rather illustrative. Accordingly, the majority

51. Id.
52. Id.
53. Id.
54. Id. at 1091.
55. Zogby, 828 A.2d at 1091.
56. Id. Harrisburg has adopted a Charter Law as permitted under Art. IX, § 3 of the Pennsylvania Constitution. Id. Art. IX, § 3 provides that:
Municipalities shall have the right and power to adopt optional forms of government as provided by law. The General Assembly shall provide optional forms of government for all municipalities. An optional form of government shall be presented to the electors by initiative, by the governing body of the municipality, or by the General Assembly. Adoption or repeal of an optional form of government shall be by referendum.

PA. CONST. art. IX, § 3.
57. 53 PA. CONS. STAT. § 41412 (1957).
58. Zogby, 828 A.2d at 1092.
59. Id. at 1092-93. The Charter Law provides for mayoral duties and powers such as: size of city council, see 53 PA. CONS. STAT. § 41213 (1957); manner in which city officials are elected, see 53 PA. CONS. STAT. § 41241 (1957); length of term, see 53 PA. CONS. STAT. § 41403 (1957); manner in which vacancies are filled, see 53 PA. CONS. STAT. § 41406 (1957), manner in which local ordinances are enacted, see 53 PA. CONS. STAT. § 41413 (1957); whether and how a department or administrator is established, see 53 PA. CONS. STAT. § 41416 (1957); and preparation of city budget, see 53 PA. CONS. STAT. § 41418 (1957).
held that Act 91 did not change Harrisburg's form of government; therefore, it was not in violation of Article IX, Section 3 of the Pennsylvania Constitution.\(^6\)

In his dissent, Justice Lamb stated that Act 91 did constitute special legislation.\(^61\) He suggested that Act 91 was "nothing more that a thinly veiled attempt by the Legislature to promulgate special legislation under the guise of a general law."\(^62\) Justice Lamb believed the General Assembly could have corrected low performance in urban school districts through the passage of general laws, and furthermore, if the remediation of failing schools had been the legitimate purpose of the Legislature, it would not have passed Act 91.\(^63\) Based on his belief that Act 91 was a special law as prohibited by the Pennsylvania Constitution, Justice Lamb did not join the majority.\(^64\)

Encompassed in Article III, Section 32 of the Pennsylvania Constitution is the prohibition against special laws, declaring that "[t]he General Assembly shall pass no local or special law in any case which has been or can be provided for by general law and specifically the General Assembly shall not pass any local or special law . . . [r]egulating the affairs of counties, cities, townships, wards, boroughs, or school districts . . ."\(^65\) Special laws permit arbitrary, favorable treatment of certain groups or regions; in this context, diversity is considered to promote inequality, thus it is rejected.\(^66\) Notwithstanding the long line of cases holding that Article III, Section 32 and the Fourteenth Amendment warrant the

\(^60\) Zogby, 828 A.2d at 1093.
\(^61\) Id. at 1093 (Lamb, J., dissenting).
\(^62\) Id. (Lamb, J., dissenting).
\(^63\) Id. (Lamb, J., dissenting).
\(^64\) Id. (Lamb, J., dissenting).
\(^65\) PA. CONST. art. III, § 32. The full text of § 32 reads as follows:
The General Assembly shall pass no local or special law in any case which has been or can be provided for by general law and specifically the General Assembly shall not pass any local or special law; 1. Regulating the affairs of counties, cities, townships, wards, boroughs, or school districts; 2. Vacating roads, town plats, streets or alleys; 3. Locating or changing county seats, erecting new counties or changing county lines; 4. Erecting new townships or boroughs, changing township lines, borough limits or school districts; 5. Remitting fines, penalties and forfeitures, or refunding moneys legally paid into the treasury; 6. Exempting property from taxation; 7. Regulating labor, trade, mining or manufacturing; 8. Creating corporations or amending, renewing or extending the charters thereof; Nor shall the General Assembly indirectly enact any special or local law by the partial repeal of a general law; but laws repealing local or special acts may be passed.
PA. CONST. art. III, § 32.
same analysis because the purposes of the two clauses are sufficiently similar, Pennsylvania's proscription of special laws bans a different type of discrimination than that of the federal Equal Protection Clause. Pennsylvania's prohibition of special laws prevents discrimination against a locality, whereas the federal Equal Protection Clause prevents discrimination against a person or group.

Article III, Section 7 (presently Article III, Section 32) was adopted in 1873, "to put an end to the flood of privileged legislation for particular localities and for private purposes which [were] common in 1873." Instead of providing for the general health and welfare of the people of the Commonwealth, the General Assembly regularly succumbed to the powerful private and economic interests. Lobbyists for business and industry often controlled the agenda of the legislature; the result was scant attention for general legislation. The purpose of Article III, Section 7 was to prohibit these laws that were deemed local and special.

In 1875, Article III, Section 7 first came before the court in Wheeler v. Philadelphia. In 1874, the General Assembly had passed the first comprehensive classification law for cities in the Commonwealth. The legislation in Wheeler divided the cities into three classes according to their size and proscribed laws related to the comprehensive classification. Under this classification, Philadelphia was the only city named to the first class; accordingly, action was brought attacking this law as local and special. The court held that Article III, Section 7 was not intended to prevent the legislature from meeting different needs, and, to aid

67. See Laudenerberger v. Port Auth. of Allegheny County, 436 A.2d 147, 155 (Pa. 1981); cf. Harristown Dev. Corp. v. Dep't of Gen. Servs., 614 A.2d 1128, 1131 (Pa. 1992) (holding that same analysis of state and federal clauses is warranted). But see Marritz, supra note 66, at 167 (arguing that provisions are similar but differences in origin, focus, and text are critical in the analysis).

68. See Marritz, supra note 66, at 167.

69. Haverford Township v. Siegle 28 A.2d 786, 788 (Pa. 1942). Art. III, § 7 was renumbered to art. III, § 32 on May 16, 1967. See Marritz, supra note 66, at 161 n.146. Art. III, § 7 enumerated twenty-seven substantive areas where special laws were prohibited; Art. III, § 32 preserves eight of the original areas. Id. For the full text of art. III, § 32, see supra note 65.

70. See Marritz, supra note 66, at 186-87.

71. Id. at 188.


73. 77 Pa. 338 (1875).

74. Wheeler, 77 Pa. at 342.

75. Id. at 341.

76. Id.
in meeting those needs, classification was not excluded.\textsuperscript{77} Although Philadelphia was presently the only member of the first class, the class was still open to other potential members as the population of other cities in the Commonwealth grew.\textsuperscript{78} The court in \textit{Wheeler} rationalized that it would be absurd to impose the same regulations of a large port city on smaller cities with barely more than a stream running through them.\textsuperscript{79}

Nearly seventy years later, the Pennsylvania Supreme Court built upon the \textit{Wheeler} rationale in \textit{Haverford Township v. Siegle}, holding that the Legislature has the right to exclude certain members of a class from legislation, when the statute would be of no use.\textsuperscript{80} The court held that a distinction may be made among townships, even though all the townships in question were members of the same population class, if the distinction was based on need and useful application.\textsuperscript{81} The legislation in question in \textit{Haverford}, the Act of June 5, 1941, P.L. 84, imposed regulations on appointment, promotion, reduction in rank, suspension, and removal of members of the police force in first class townships.\textsuperscript{82} However, under the Act, the class of townships that would be subjected to the regulations of the Act was limited to first class townships having three or more paid police officers.\textsuperscript{83} The Township of Haverford argued that the Act was a violation of Article III, Section 7 because the classification was based on the number of paid policemen in the township as well as the population of the township.\textsuperscript{84}

Haverford further argued that for a classification to be lawful, it had to be based solely on population.\textsuperscript{85} The court rejected the argument that the only appropriate criterion for a class was population, and held that the legislature had the right, while regulating a particular class, "to exclude certain members of the class to

\begin{quote}
\textsuperscript{77} \textit{Id.} at 349-50.
\textsuperscript{78} \textit{Id.} at 350.
\textsuperscript{79} \textit{Wheeler}, 77 Pa. at 350.
\textsuperscript{80} 28 A.2d 786 (Pa. 1942).
\textsuperscript{81} \textit{Haverford}, 28 A.2d at 786.
\textsuperscript{82} \textit{Id.} at 787. The legislation before the court was the Act of June 5, 1941, P.L. 84, 53 PA. CONS. STAT. § 351.1 (1957). \textit{Id.}
\textsuperscript{83} \textit{Id.}
\textsuperscript{84} \textit{Id.}
\textsuperscript{85} \textit{Id.} Petitioner Haverford Township based their argument on PA. CONST. art. III, § 34, which expressly grants the legislature power to classify according to population. \textit{Id.} at 789-90. However, the court held that the grant to classify according to population does not exclude the right to classify by another method. \textit{Id.} at 790.
\end{quote}
whom the Act can have no useful application." The court further stated, "[a] township having one or two or no police officers would be justified in objecting strenuously to the expense and inconvenience of maintaining a complete system of police civil service which would have no function to perform." The Act was upheld on the grounds that the exclusion of townships with fewer than three officers from the regulation was both reasonable and necessary.

In 1978, the Pennsylvania Supreme Court held that classification is a question for the legislature, and subject only to judicial review to the extent required for the court to make a determination as to whether the classification is founded on real distinctions, as opposed to artificial or irrelevant distinctions used only to avoid constitutional mandates. In Freezer Storage, Inc. v. Armstrong Cork Co., Freezer Storage, the plaintiff, contended that the Act of December 22, 1965, P.L. 1183 (hereinafter "Statute") created an unlawful distinction between engineers, architects, builders and building contractors (hereinafter, collectively called "builders") and others involved with land improvement such as landowners and suppliers, to whom the statute did not apply. The Statute limited the builder’s liability for an injury arising from a building improvement to twelve years after the completion of the project.

The court found that the inquiry before them was whether there were "real distinctions between builders and landowners, and between builders and suppliers" that would justify the time limitation placed on the builders’ liability. Noting that it was rational to adjust length of time for liability in proportion to the size of the class of potential plaintiffs, the court theorized several reasons the Legislature could have limited the liability of builders to twelve years.

86. Haverford, 28 A.2d at 788.
87. Id.
88. Id.
90. Freezer Storage, 382 A.2d at 718.
91. Id.
92. Id.
93. Id. Among the potential reasons the court listed for the legislature's distinction of builders were: 1) builders have a larger class of potential plaintiffs than that of landowners or suppliers; 2) builders may be liable under several different legal theories—contract, warranty, negligence, strict liability in tort; 3) builders have no control over maintenance of the improvement once the construction is completed; 4) builders' insurance differs from landowners' insurance in both structure and pricing. Id.
The court, while upholding the statute, held that the actual intent of the Legislature was irrelevant if any reason could be hypothesized by the court to create a rational basis for the Legislature's distinction.\textsuperscript{94} In reaching this holding, the majority relied on several cases that had addressed the issue of special laws.

First, thirty years earlier, the Pennsylvania Supreme Court had held that an act, subjecting operators of bituminous open-pit coal mines to conservation measures not required of other miners, was constitutional.\textsuperscript{95} The court concluded that the Legislature could have rationalized the distinction for this form of mining based on the greater environmental risks associated with it.\textsuperscript{96} In a similar case, the Pennsylvania Supreme Court upheld an act that permitted a state agency to limit the granting of loans to the class of nursing homes that met certain safety standards.\textsuperscript{97} The court stated that the legislature could have found that the promotion of safety standards in the business world was a proper state objective and the limitation of loan money was rationally related to that objective.\textsuperscript{98} Additionally, in another Pennsylvania Supreme Court case, a tax upon domestic life insurance companies that was not imposed upon domestic casualty insurance companies was upheld.\textsuperscript{99} The court hypothesized that the tax differential could be based upon the different characters of the two insurances and was therefore a rational distinction.\textsuperscript{100} After reviewing these cases, the court, in \textit{Freezer}, concluded that once distinctions among a class are found to be genuine, the reviewing court has no further discretion to examine the Legislature's judgment, notwithstanding the court's opinion as to the wisdom of the distinction.\textsuperscript{101}

In \textit{Harristown Development Corp. v. Dep't of General Services}, the Pennsylvania Supreme Court considered whether legislation that created a class with only one member would be struck down as unconstitutional.\textsuperscript{102} Act 153 of 1988 required nonprofit corporations, which collected rental income over $1,500,000 per year from the Commonwealth, to meet the requirements of the Sunshine Act

\textsuperscript{94} Id. at 718.
\textsuperscript{95} \textit{Freezer Storage}, 382 A.2d at 719 (citing DuFour v. Maize, 56 A.2d 675 (Pa. 1948)).
\textsuperscript{96} Id. at 719 (citing DuFour, 56 A.2d at 675).
\textsuperscript{97} Id. at 719 (citing Tosto v. Pa. Nursing Home Loan Agency, 331 A.2d 198 (Pa. 1975)).
\textsuperscript{98} Id. at 719 (citing Tosto, 331 A.2d at 198).
\textsuperscript{99} Id. at 719 (citing Commonwealth v. Life Assurance Co., 214 A.2d 209 (Pa. 1965)).
\textsuperscript{100} \textit{Freezer Storage}, 382 A.2d at 719 (citing \textit{Life Assurance Co.}, 214 A.2d at 209).
\textsuperscript{101} Id. at 718, 721.
\textsuperscript{102} 614 A.2d 1128, 1132 (Pa. 1992).
and the Right to Know Act. Harristown argued that since they were the only nonprofit corporation to lease more than $1,500,000 of rental space to the Commonwealth, Act 153 violated Article III, Section 32 of the Pennsylvania Constitution. The court stated that "a classification of one member is not unconstitutional so long as other members might come into that class." The majority held that the appropriate test was "whether there is any rational basis pursuant to which the classification may have been made." In analyzing the purported rational basis for a class of one, the court stated:

Because Harristown is the largest supplier of rented space to the Commonwealth, and because the viability of state government depends upon assurance that it will continue to be able to have space for its various departments and agencies, the Commonwealth needs to be able to monitor the soundness of Harristown's business operations and to avoid impending difficulty which may threaten Harristown's continued operation and ability to provide rental space for government operations.

The court acknowledged that Act 153 had been written with Harristown in mind, but it upheld Act 153 because the class was not closed to other potential members and also because there was a rational basis for the classification.

In DeFazio v. Civil Serv. Comm'n of Allegheny County, while affirming the Commonwealth Court's order for a permanent injunction, the Pennsylvania Supreme Court declared 16 PA. CONS. STAT. §§ 4216, 4217 (hereinafter "Acts") to be in violation of Article III, Section 32 of the Pennsylvania Constitution. Allegheny County Sheriff DeFazio had brought the action seeking to enjoin the county from enforcing the legislation that imposed hiring and

103. Harristown, 614 A.2d at 1129. Originally, the bill was passed to include any nonprofit corporation which leased land, offices, or accommodations to the Commonwealth. Id. at 1130. After protests from several non-profits, the bill was amended to include only corporations in excess of the $1,500,000 figure. Id. "The Right to Know Law and the Sunshine Act provide, respectively, that records and meetings of covered agencies shall be open to citizens of the Commonwealth." Id. The Sunshine Act is codified at 65 PA. CONS. STAT. §§ 271-286, and The Right to Know Act is codified at 65 PA. CONS. STAT. §§ 66.1-66.4 (2000).
104. Harristown, 614 A.2d at 1131.
105. Id. at 1132 n.9.
106. Id. at 1132.
107. Id. at 1132 n.9.
108. Id. at 1129.
promotion requirements on sheriffs of second class counties and curtailed political activities of sheriff's employees.\textsuperscript{10} The Acts singled out Allegheny County by creating a new sub-classification: sheriffs of second class counties.\textsuperscript{11} In defense of the legislation, the Attorney General argued that the second class county and the unique function of the sheriff's office justified the differential treatment.\textsuperscript{12} However, the court held that "[p]lainly such a sub-classification bears no relationship either to the distinction of Allegheny County as a county of the second class or any unique function of the office of county sheriff."\textsuperscript{13}

In \textit{DeFazio}, the court acknowledged that the legislature may treat different classes of counties differently, but Sections 4216 and 4217 proposed a sub-classification by mandating different treatment of one particular county officer from another similarly situated county officer.\textsuperscript{14} Additionally, the legislation singled out the sheriff, as the only county official in Pennsylvania without some discretion in the hiring, termination, or promotion of his employees.\textsuperscript{15} The court stated that "[o]ne particular county officer

\textsuperscript{10} \textit{DeFazio}, 756 A.2d at 1104. 16 PA. CONS. STAT. § 4216 provides in relevant part: (b) Whenever a vacancy is likely to occur or is to be filled in a permanent position in the office of sheriff, the sheriff shall submit to the civil service commission a statement indicating the position to be filled. The civil service commission shall thereupon certify to the sheriff the names of the three eligibles willing to accept appointment who are highest, according to the results of the written examination, on the appropriate promotion list or employment list, whichever is in existence. If there are less than three eligibles on appropriate eligible lists who are willing to accept appointment, the civil service commission shall certify all the names on these lists. If upon inquiry by the civil service commission, any person on any promotion or employment list is found to be not available for promotion or appointment, the person's name shall not for the time being be considered among the names from which a promotion or appointment is to be made. (c) Appointees shall be selected for each existing vacancy from the eligible list in the order of names of the three persons thereon who have received the highest average on the written examination. Examinations shall be administered for positions of the rank of captain and below and appointments shall be made in the order of names of the three persons who have received the highest average.

16 PA. CONS. STAT. § 4216(a)(b) (1953). 16 PA. CONS. STAT. § 4217 provides in relevant part: (a) No employee shall use his official authority or influence for the purpose of interfering with or affecting the result of an election. (b) No employee shall take an active part in political management or in a political campaign.

16 PA. CONS. STAT. § 4217(a) (1953).

111. \textit{DeFazio}, 756 A.2d at 1106.

112. \textit{Id.}

113. \textit{Id.}

114. \textit{Id.}

115. \textit{Id.}
may not be treated differently from the other officers of that county unless the difference in treatment bears some reasonable relationship to some unique characteristic of that particular office." The Attorney General cited the interaction with the public and the judicial system as the unique characteristics that warranted differential treatment of the sheriff's office. The court acknowledged this distinction, but ultimately held that it was "insufficient to justify different treatment from other offices which have, to varying extents, the same types of interaction, e.g., the county police, the district attorney, and others who must relate to both the public and the courts."

In 2000, the plaintiffs in Hickok I brought a similar action concerning Act 91's predecessor, Act 16. The language of Act 16 limited the potential class of mayoral controlled school districts to only Harrisburg. Citing DeFazio, the Pennsylvania Supreme Court acknowledged that the prohibition against special laws did not preclude the General Assembly from classifications "provided that those classifications are reasonable rather that arbitrary and bear a reasonable relationship to the object of the legislation." However, the court found Act 16 to be unconstitutional because there was "no rational basis for treating the school district of Harrisburg differently from other school districts with failed educational systems." The majority applied the test from Freezer Storage, stating that a classification must be based on real distinctions, not artificial or irrelevant ones developed for the sole purpose of avoiding being categorized as a special law. Additionally, the court relied on the rule from Harristown, stating that "this court has held that a classification is per se unconstitutional when the class consists of one member and it is impossible or highly unlikely that another can join the class." The public officials contended that it was plausible that the capital may be moved to another city; thus, another city would be qualified as a potential

116. DeFazio, 756 A.2d at 1106.
117. Id.
118. Id.
119. Hickok I, 761 A.2d at 1132.
120. Id. at 1135. Act 16 provided that "a school district of the second class with a history of low test performance which is coterminous with the city of the third class which contains the permanent seat of government" (i.e., Harrisburg). 24 PA. CONS. STAT. § 17-1707-B (2000).
121. Hickok I, 761 A.2d at 1136 n.2.
122. Id. at 1136.
123. Id.
124. Id.
member of the class. However, the court rejected this argument on the grounds that Act 16 specified that there was to be only one capital city in the Commonwealth.

In Zogby, the Pennsylvania Supreme Court consistently applied the rules that pertain to Article III, Section 32 of the Pennsylvania Constitution. A few clearly defined principles have evolved for a special laws analysis. First, the class must have the potential of containing more than one member. In Hickok I, the Pennsylvania Supreme Court refused to uphold the Reed Amendment, since the only potential class member was the Harrisburg School District. Again in Zogby, the court has applied the same rule. However, the court reached a different result, upholding Act 91, because of the potential for several school districts to be listed into the class, instead of just one.

Second, the classification must be tied to a legitimate state purpose. This rule requires the classification to be founded on real distinctions in the subjects classified. In Zogby, the court found several purposes the Legislature could have relied on in the creation of Act 91. The court recognized that the Legislature could have permissibly chosen to limit the program to districts within cities having a mayor-controlled government. In these cities, the mayor would be held accountable to the same local electorate that chose the school board. Also, cities practicing home-rule, mayor-council governments under Charter Law have an increased level of local control. Thus, it follows that an education reform plan that will be controlled locally should first be implemented in cities with a government already practicing the highest level of local control. Additionally, a pilot program, or any other program that addresses state problems on an incremental basis, has never before been considered biased or special. Clearly, the court found

125. Id.
126. Hickok I, 761 A.2d at 1136.
127. Id. at 1136.
128. Id.
129. Zogby, 828 A.2d at 1091.
130. Id. at 1086.
133. Zogby, 828 A.2d at 1090.
134. Id.
135. Id.
136. Id.
several legitimate reasons of the Legislature for the creation of Act 91's classification.\textsuperscript{137}

In \textit{Zogby}, the Pennsylvania Supreme Court reached a consistent decision. The court applied principles that have become palpably defined in the last seventy years of case law. Act 91 created a class with a potential for several members.\textsuperscript{138} The court upheld the established rule: a law, creating a class with a potential for more than one member, will not be considered special, if there is a rational basis for the classification, and the classification furthers a legitimate government interest. Following the long line of cases that have molded the way the Commonwealth approaches Act III, Section 32's prohibition against special laws, the Pennsylvania Supreme Court ruled in a conventional manner in \textit{Zogby}.

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\textsuperscript{137} \textit{Id.} at 1091.
\textsuperscript{138} \textit{Zogby}, 828 A.2d at 1088.