

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JACOB DOYLE CORMAN, III, *et al.*,
Petitioners

NO. 294 MD 2021

v.

ACTING SECRETARY OF THE
PENNSYLVANIA DEPARTMENT OF
HEALTH,

Respondent

**RESPONDENT’S OPPOSITION TO THE APPLCIATION OF SPRING
GROVE SCHOOL DISTRICT AND CENTRAL YORK SCHOOL
DISTRICT FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF**

Respondent, Acting Secretary of the Pennsylvania Department of Health, through her undersigned counsel, pursuant to this Court’s October 6, 2021, Order, opposes to the Application for Leave to File Amicus Curie Brief filed by Spring Grove Area School District and Central York School District and, in support thereof, avers as follows:

1. Admitted.
2. Denied as stated. By way of further response, Pennsylvania Rule of Appellate Procedure 531 defines an *amicus curiae* as “a non-party interested in the questions involved in any matter pending in an appellate court.” The Pennsylvania Supreme Court has held that “[a]n *amicus curiae* is not a party and cannot raise issues that have not been preserved by the parties.” *Commonwealth v. Cotto*, 753

A.2d 217, 224 n.6 (Pa. 2000). Here, the questions pending before the Court, as stipulated by the parties, are (1) the August 31, 2021 “Order of the Acting Secretary of the Pennsylvania Department of Health Directing Face Coverings in School Entities” constitutes a rule or regulation subject to the provisions of the Regulatory Review Act, Act of June 25, 1982, P.L. 633, *as amended*, 71 P.S. §§745.1 - 745.15 and (2) whether that Order violates the principles governing the delegation of administrative authority. *See September 13, 2021, Order*. The proposed brief does not address either of these issues; therefore, it should not be permitted.

3. Denied as stated. It is admitted only that the Order applies only to school entities and that school districts have an interest in this outcome of this case. This does not change the fact that the proposed brief does not address the issues currently before the Court.

WHEREFORE, Respondent respectfully requests that the Application for Leave to File *Amicus Curie* Brief be denied.

Respectfully submitted,

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By: /s/ Karen M. Romano
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DATE: October 8, 2021

CERTIFICATE OF COUNSEL

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

/s/ Karen M. Romano

KAREN M. ROMANO
Chief Deputy Attorney General

CERTIFICATE OF SERVICE

I, Karen M. Romano, Chief Deputy Attorney General, do hereby certify that I have this day caused to be served the foregoing Opposing to Application for Leave to File *Amicus Curiae* Brief, via PACFile notification, on the following:

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KAREN M. ROMANO
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DATE: October 8, 2021