



EDUCATION PRACTICE

ALERT

CONSTITUTIONAL RIGHT TO PRIVACY? (A FOLLOW-UP)

Following up on yesterday's bit of news, I was asked why the case cited *entitled* the PSEA to a stay, reimposing the injunction against releasing home addresses. Essentially, the PA Supreme Court gave that answer by the case they cited, although the meaning of the answer is a bit cryptic.

The Court cited Pa. Pub. Util. Comm'n v. Process Gas Consumers Group case to give that entitlement. That case sets the standards for when a "stay" is granted (sometimes called a "supersedeas," it is when a court will put its decision on hold pending the outcome of the appeal). In applying the first part of that case's standard to the present case, we learn that the PA Supreme Court believes that the PSEA has "ma[de] a strong showing that [it] is likely to prevail on the merits." *Id.*, at 808.

However, remember that the Commonwealth Court "dismissed" or "threw out" the case on procedural grounds, saying that the PSEA sued the

wrong party, and specifically should not have sued the OOR. This is what makes the above reference cryptic. The appeal before the Supreme Court now is on the question whether the case should have been thrown out on these procedural grounds. The Court could be answering that limited question (procedurally, the case should not have been thrown out at that stage of the case), or the more fundamental and ultimate question (there is a constitutional right to privacy).

Whichever reason, the PA Supreme Court has telegraphed its initial feeling that the case had sufficient merit to at least go further in the process. For all we know, it could rule on the constitutional right to privacy issue, too.

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