

PRELIMINARY INJUNCTION—REVIEW ON APPEAL FROM DENIAL OF INJUNCTION—THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN DENYING PLAINTIFFS’ MOTION FOR A PRELIMINARY INJUNCTION WHERE PLAINTIFFS FAILED TO DEMONSTRATE A REASONABLE PROBABILITY THAT THE STATUTE AT ISSUE WILL BE INVALIDATED—*Brian B. v. Commonwealth of Pennsylvania Department of Education*, 230 F.3d 582 (3d Cir. 2000).

Pennsylvania citizens, ages six through twenty-one, have the right to a free public education until graduation from high school. *Brian B. v. Commonwealth of Pennsylvania Department of Education*, 230 F.3d 582, 584 (3d Cir. 2000) (citing 24 PA. STAT. ANN. tit. 13, § 1301 (West 2000)). Pennsylvania has extended this right to juvenile delinquents and youths sentenced as adults to state correctional institutions by providing them with full education programs. Under Pennsylvania statute, 24 PA. CONS. STAT. § 13-1306.2(a) (Subsection A), however, juveniles incarcerated in adult county correctional facilities for criminal convictions are treated like expelled students. *Id.* at 584-85. Consequently, these convicted juveniles under the age of seventeen receive minimum educational services. *Id.* at 585. Juveniles seventeen years of age or older receive no education.

Because of the dichotomy under Pennsylvania law, the determinative factor in deciding whether a youth convicted as an adult receives a full education is the location of his or her incarceration. The place of imprisonment is determined by the length of the sentence and the sentencing judge’s discretion. Youth offenders serving up to two years are sent to county correction centers. Youth offenders sentenced for five years or more go to state facilities. Sentencing judges have the authority to choose the appropriate locale for juveniles sentenced between two and five years.

An exception to Subsection A created another distinction between convicted juveniles receiving full educational benefits and those receiving minimal or no education. This exception granted full educational services to all school-aged pretrial detainees and all students needing special education due to a disability.

A group of juveniles, who were denied education under Subsection A, filed a class action suit in the United States District Court for the Eastern District of Pennsylvania against the defendants Pennsylvania Department of Education (DOE), its secretary, and three local school districts. *Id.* at

584. Applying the Equal Protection Clause of the Fourteenth Amendment and using a rational basis test, the district court held that the plaintiffs did not demonstrate the reasonable likelihood of success required for a preliminary injunction. *Id.* at 585. The district court, therefore, denied the plaintiffs' motion for a preliminary injunction barring the enforcement of Subsection A. *Id.* at 584.

The plaintiffs appealed the district court's decision to the United States Court of Appeals for the Third Circuit. *Id.* The plaintiffs argued that the district court erred by failing to apply intermediate scrutiny review under *Plyler v. Doe*, because Subsection A detrimentally affects education. *Id.* at 585 (citing *Plyler v. Doe*, 457 U.S. 202 (1982)). The plaintiffs alternatively asserted that even if this more stringent standard is rejected by the court, Subsection A should be barred from enforcement because it is not rationally related to a legitimate governmental interest. *Id.*

The United States Court of Appeals for the Third Circuit held that the district court did not abuse its discretion in denying the plaintiffs' motion for a preliminary injunction, because the plaintiffs failed to demonstrate a reasonable probability that the Pennsylvania statute, which restricts the education of juveniles sentenced as adults to county correctional facilities, will be invalidated. *Id.* at 588. Circuit Judge Stapleton, writing for the majority of the court, began his analysis by listing the factors a court must consider when deciding whether or not to grant a motion for a preliminary injunction. *Id.* at 585. The moving party must show, according to the judge: (1) a demonstrated probability of success on the merits; (2) demonstrated irreparable harm to the movant; (3) significant harm to the nonmoving party; and (4) the effect on the public's interest. *Id.* Judge Stapleton then explained the circuit court's method of review. *Id.* First, the majority stated that the appellate court reviews the district court's legal conclusions *de novo*. *Id.* Second, the majority explained that the appellate court reviews the district court's findings of fact for clear error. *Id.* Third, the majority clarified that the appellate court verifies that the district court did not abuse its discretion in granting or denying the preliminary injunction. *Id.*

Next, the court clarified the court's reasoning for rejecting the heightened scrutiny standard applied in *Plyler v. Doe*, a Supreme Court case challenging a statute that prevented the allocation of state money to educate children of illegal aliens. *Id.* at 586 (citing *Plyler v. Doe*, 457 U.S. 202 (1982)). Judge Stapleton articulated that the Supreme Court applied intermediate scrutiny in *Plyler* because of the "unique circumstances" in which innocent children were being denied education due to the unlawful actions of their parents. *Id.* (citing *Plyler v. Doe*, 457 U.S. 202 (1982)). The court distinguished *Plyler* from the present case by emphasizing that

the juveniles here are being deprived of equal educational services due to their own illegal actions. *Id.* The court, therefore, rejected the application of heightened scrutiny and continued to analyze the case under a rational basis review. *Id.*

The majority indicated that a statute that does not infringe upon a fundamental right or discriminate against a suspect class will be deemed constitutional if it is rationally related to a legitimate state interest. *Id.* The court, moreover, suggested that the plaintiffs must show that the classification is wholly irrational to rebut the statute's presumption of validity. *Id.* The court noted that the plaintiffs can demonstrate this irrationality by disproving every justification for the classification. *Id.*

Next, Judge Stapleton legitimized the defendant's justifications for Subsection A's distinction between juvenile offenders incarcerated in county facilities and juvenile offenders imprisoned in state institutions. *Id.* at 586-88. The court conceded that the statute's effect of limiting education services provided to juveniles in adult county correctional facilities was rationally related to the legitimate concern about insufficient space in a few local adult correctional facilities. *Id.* at 587. The majority then asserted that it was improper to second-guess the legislature's decision to reduce high per student costs in county facilities by limiting the education of convicted juveniles incarcerated in local adult correctional facilities. *Id.* at 587-88.

Judge Stapleton justified the excluded classes under Subsection A by reasoning that (1) pretrial detainees have not yet been pronounced guilty, (2) special education students have a greater need for education than the average student, and (3) educating all youths in juvenile facilities is less costly because all the inmates are students. *Id.* at 587. The legislature's decision to provide full education benefits to juvenile inmates in state facilities, the court noted, was rationally related to its intent to avoid security problems agitated by the suspension of existing education programs in state correctional facilities. *Id.* at 588. The court also validated the defendants' position that state inmates, who are generally imprisoned for longer sentences, would benefit more from scholastic programs than county inmates, who are incarcerated for less than five years. *Id.* at 587-88.

After holding that Subsection A is rationally related to the legislature's legitimate state interest, the court distinguished the present case from *Romer v. Evans*. *Id.* at 588 (citing *Romer v. Evans*, 517 U.S. 620 (1996)). The majority noted that in *Romer*, the Supreme Court found no rational basis exists where a specific class of individuals, homosexuals, is denied a right based on a single trait. *Id.* (citing *Romer*, 517 U.S. at 633, 635). The court concluded that, unlike in *Romer*, a rational basis exists in

the present case because the class of youths is not identifiable by one trait. *Id.* Moreover, the court noted that the youths' burden is limited to an educational context. *Id.* Based upon this conclusion, the circuit court affirmed the district court's denial of the plaintiffs' motion for preliminary injunction. *Id.*

In her dissent, Judge Roth agreed with the majority that the case should be analyzed under a rational basis test, but criticized the court for giving too much deference to the Pennsylvania legislature. *Id.* at 588-89 (Roth, J., dissenting). Judge Roth asserted that Subsection A's discrimination against juvenile county inmates does not meet a rational basis test for several reasons. *Id.* at 589 (Roth, J., dissenting). Judge Roth stated that education should not be denied arbitrarily to one group because of the potential detrimental impact it would have on both the "basic institutions" of our country and "the life of the child." *Id.* at 589-90 (Roth, J., dissenting) (quoting *Plyler v. Doe*, 457 U.S. 202, 221 (1982)). The dissent also advised that the court should scrutinize the equal protection rights of prisoners because the legislature might not. *Id.* at 590 (Roth, J., dissenting). The dissent concluded that the defendants' justifications for denying this particular group access to education were inconsistent, and therefore, not rationally related to the government's asserted interests. *Id.*

The dissent, thereafter, demonstrated the arbitrariness of the five classifications created by Subsection A. *Id.* at 590-93 (Roth, J., dissenting). First, the dissent stated that the plaintiffs have rebutted the defendants' claim that youths incarcerated in adult, county facilities must be denied educational services due to inadequate space. *Id.* at 590-91 (Roth, J., dissenting). According to Judge Roth, this justification of inadequate space is arbitrary because the facilities make space for the education of pre-trial detainees and special education students. *Id.* at 591 (Roth, J., dissenting). In addition, the dissent noted that the concern about inadequate space is tenuous because the number of juvenile inmates in the local facility changes every day and the dilemma of inadequate space can be remedied through proper prioritizing by the DOE. *Id.*

The dissent also rejected the defendant's second justification concerning high per-pupil costs in adult county facilities. *Id.* (Roth, J., dissenting). The DOE, the dissent claimed, would have prohibited education in all county facilities if it were truly worried about curtailing expenditures on the education of prisoners. *Id.* Judge Roth proposed that utilizing technological advances, like "closed-circuit television," in correctional facilities could provide educational opportunities to several groups at a lower cost. *Id.* In addition, the dissent opined that the Pennsylvania DOE's decision to provide educational services to some county inmates and not to others is arbitrary in itself, and therefore, does

not even justify a legitimate goal to minimize state expenses. *Id.* at 592 (Roth, J., dissenting).

The dissent further questioned the defendants' argument that pre-trial detainees are properly excluded, because they have not yet been found guilty. *Id.* at 591 (Roth, J., dissenting). The defendants' assertion, Judge Roth insisted, is not rationally related to the purpose of the statute and infers that convicted juveniles in state facilities should be prohibited from receiving education. *Id.* Next, the dissent argued that even though the defendants claim that special education students are entitled to free public education under federal law, the statute is still unjustifiable. *Id.* Judge Roth continued her analysis by rejecting the defendants' third justification—that state inmates would benefit more from educational services than would county inmates. *Id.* at 592 (Roth, J., dissenting). The dissent recognized that the defendants' argument that state inmates are "too transient" is undermined by the fact that pretrial detainees, who are an even "more transient class," are granted the right to full educational benefits. *Id.* The dissent also noted that some state inmates are incarcerated for a shorter time than some county inmates because those youths sentenced between two and five years may be imprisoned in either facility based on the judge's discretion. *Id.* The judge, therefore, declared that the defendants' reasoning that state inmates are less likely to go back to school is flawed. *Id.*

Judge Roth, continuing her dissent, characterized the defendants' intention to prevent security problems in state prisons as irrelevant, because the plaintiffs were not arguing that education should be denied to youths in state facilities. *Id.* The dissent also attacked the attenuated relationship between expelled students and convicted youths. *Id.* at 592-93 (Roth, J., dissenting). Convicted juveniles should not be treated like expelled students, purported the dissent, because there is no rational connection between the two groups. *Id.* at 593 (Roth, J., dissenting). Judge Roth distinguished the two groups by pointing out that a student, who is expelled from school for violating school rules, is denied only a free public education. *Id.* The dissent proffered that an expelled student can continue his or her education in a private school but a juvenile delinquent cannot choose an alternative education program. *Id.* Judge Roth concluded that because she believes the plaintiffs have demonstrated a reasonable probability of success on the merits, the case should be remanded to the trial court to determine whether the plaintiffs proved the necessary elements for a preliminary injunction. *Id.* at 594 (Roth, J., dissenting).

*Brian B.* exemplifies a situation in which the court struggles between its duty to enforce constitutional principles, such as the Equal Protection Clause, and its duty to refrain from judicial intervention into legislative

determinations. It also demonstrates the difficulty in determining whether legislative action is rationally related to a legitimate interest, or whether the government's justification is mere pretext disguised as a lawful purpose.

The majority's opinion reflects a strong desire to justify the legislature's actions. This justification is demonstrated by the majority's continuous effort to avoid second-guessing the legislature and by its brief, indulgent review of the defendants' reasoning. Although some deference to the legislature is necessary, the majority created reasons to support the defendants. Judge Roth's detailed dissent, however, realistically demonstrated that the defendants' intentions do not relate to the denial of education to a narrowly defined group of individuals. As Judge Roth stated, the majority failed to recognize the inconsistencies in the defendants' justifications. *See id.* at 590, 593 (Roth, J., dissenting). Although rational basis review is a lenient standard, it deserves careful consideration, especially where such important issues like education and equal protection are concerned. While the court has decided to dismiss the plaintiff's challenges, the legislature may want to more carefully consider the dissent's thorough analysis.

*Rebecca A. Oleksy*