[J-75A&B-2011]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

CASTILLE, C.J., SAYLOR, EAKIN, BAER, TODD, McCAFFERY, ORIE MELVIN, JJ.

THE HOSPITAL & HEALTHSYSTEM ASSOCIATION OF PENNSYLVANIA, GEISINGER HEALTH SYSTEM, ST. VINCENT HEALTH CENTER AND ABINGTON MEMORIAL HOSPITAL	:	No. 20 MAP 2010 Appeal from the Order of the Commonwealth Court at No. 522 MD 2009 dated April 15, 2010
v.	:	
THE COMMONWEALTH OF PENNSYLVANIA, THE DEPARTMENT OF INSURANCE, THE TREASURY DEPARTMENT, AND THE OFFICE OF THE BUDGET OF THE COMMONWEALTH OF PENNSYLVANIA	:	
APPEAL OF: COMMONWEALTH OF PENNSYLVANIA, THE DEPARTMENT OF INSURANCE AND THE OFFICE OF THE BUDGET OF THE COMMONWEALTH OF PENNSYLVANIA	:	ARGUED: September 14, 2011
THE PENNSYLVANIA MEDICAL SOCIETY, ON BEHALF OF ITSELF AND ALL OF ITS MEMBERS	:	No. 21 MAP 2010 Appeal from the Order of the Commonwealth Court at No. 523 MD 2009 dated April 15, 2010
v.	:	
THE COMMONWEALTH OF PENNSYLVANIA; THE DEPARTMENT OF INSURANCE, THE TREASURY DEPARTMENT, AND THE OFFICE OF THE BUDGET OF THE COMMONWEALTH OF PENNSYLVANIA	:	

APPEAL OF: COMMONWEALTH OF PENNSYLVANIA, THE DEPARTMENT OF INSURANCE AND THE OFFICE OF THE BUDGET OF THE COMMONWEALTH OF PENNSYLVANIA : ARGUED: September 14, 2011

OPINION

MR. JUSTICE SAYLOR[1] **DECIDED: September 26, 2013**

In this direct appeal, we determine the constitutionality of legislation mandating a one-time transfer of money from the Medical Care Availability and Reduction of Error Fund to Pennsylvania's General Fund.

I. Background

In 2002, the General Assembly enacted the Medical Care Availability and Reduction of Error Act (the "MCARE Act"),[2] which requires health care providers to maintain a minimum level of professional liability insurance. The MCARE Act also created the Medical Care Availability and Reduction of Error Fund (the "MCARE Fund"), which is designated as a "special fund" within the state treasury. 40 P.S. §1303.712(a). The MCARE Fund is administered by the Insurance Department of Pennsylvania. See id. §1303.713(a).

Under the MCARE Act, Pennsylvania physicians, hospitals, and certain other health care providers, as a condition of practicing in Pennsylvania, are required to purchase medical professional liability insurance (or provide self-insurance) in the amount of $500,000 per occurrence or claim, and to participate in the MCARE Fund. See 40 P.S. §1303.711(a), (d)(2), (e). The MCARE Fund provides a secondary layer of

[1] This case was reassigned to this author.

[2] Act of Mar. 20, 2002, P.L. 154, No. 13 (as amended 40 P.S. §§1303.101-1303.1115).

liability coverage to providers by paying, subject to the fund's liability limits, damages awarded in medical malpractice actions in excess of the required minimum level of professional liability coverage. See id. §1303.711(g). Presently, the fund's liability limit is $500,000 per occurrence. See id. §1303.712(c). The MCARE Fund is funded by annual assessments levied upon health care providers based on a statutory formula, and loans secured, when needed, from other state funds, such as the Catastrophic Loss Benefits Continuation Fund. See id. §§1303.712(d), 1303.713(c).[3]

Although the MCARE Fund is similar to a supplemental insurance carrier, there are differences, the main one for present purposes being that there is no risk transfer in exchange for premiums. Rather, the statutory formula for assessments levied against health care providers is designed to: (i) reimburse the fund for the payment of reported claims that became final during the preceding year; (ii) pay expenses of the fund incurred during the preceding year; (iii) pay principal and interest on monies that the fund borrowed; and (iv) create a reserve that is ten percent of the sum of (i)-(iii) above. See 40 P.S. §1303.712(d). At any time there may be unfunded liability arising from unreported or unresolved claims. If and when the Insurance Commissioner determines that the private insurance market has the capacity to satisfy professional liability requirements, the MCARE Fund will cease providing coverage for new liability. See id. §§1303.712(c)(2), 1303.711(d)(4). The fund will not immediately terminate, however, as it will still be responsible for excess coverage on unreported or unresolved claims stemming from events that occurred during coverage years. Because assessments are based on the claims paid in the prior year, the MCARE Fund will continue to collect

[3] At the time MCARE became law, the MCARE Fund was also funded by surcharges on motor vehicle violations. See 75 Pa.C.S. §6506(b) (repealed). That provision was repealed by the Act of June 30, 2011, P.L. 159, No. 26, §13. Vehicle surcharges are now deposited in the Commonwealth's General Fund. See id. §9; 72 P.S. §1798-E.

assessments until all claims for which it is responsible have been satisfied. The fund's actuaries have projected that it may continue to pay claims – and thus, collect assessments – for forty years after the fund ceases to provide coverage. At that time, monies remaining in the fund are to be distributed to health care providers in proportion to their assessments during the preceding year. See id. §1303.712(k).

Due to a revenue shortfall, the Commonwealth faced a budget impasse for the 2009-10 fiscal year that lasted approximately 100 days. An interim budget was passed in early August of 2009, and the impasse was finally resolved on October 9, 2009, when the Governor approved a supplemental appropriations bill, as well as implementing legislation making amendments to Pennsylvania's Fiscal Code.[4] See Act of Oct. 9, 2009, P.L. 537, No. 50 ("Act 50"). One of Act 50's provisions designed to balance the budget directed that $100 million be transferred from the MCARE Fund to the General Fund. See 72 P.S. §1717.1-K(1).[5] That provision is at the center of this case.

On October 13, 2009, Appellees filed petitions for review in the nature of complaints for declaratory judgment and injunctive relief in the Commonwealth Court's original jurisdiction.[6] The petitions named as respondents the Commonwealth of Pennsylvania, the Insurance Department, the Treasury Department, and the Office of

[4] Act of Apr. 9, 1929, P.L. 343, No. 176.

[5] Pennsylvania is required to have a balanced budget. See PA. CONST. art. VIII, §§12, 13; Jubelirer v. Rendell, 598 Pa. 16, 41-42, 953 A.2d 514, 529 (2008).

[6] Two petitions were filed, one by the Pennsylvania Medical Society ("PAMS") on behalf of itself and its members, and the other by Hospital & Healthsystem Association of Pennsylvania ("HAP") on behalf of itself and its members, Geisinger Health System, St. Vincent Health Center and Abington Memorial Hospital. The petitions were consolidated on November 9, 2009.

the Budget (collectively, the "Commonwealth"),[7] and sought a declaration that: (1) the transfer of $100 million from the MCARE Fund to the General Fund extinguished vested rights or constituted an illegal taking in violation of the due process guarantees contained in Article I, Section 1 of the Pennsylvania Constitution and the Fourteenth Amendment to the U.S. Constitution (Count I); and (2) the transfer violated the Uniformity Clause of the Pennsylvania Constitution (Count II). The petitions also requested injunctive relief to prevent the transfer of funds or remediate any unlawful action taken pursuant to Act 50.

Concerned that the Commonwealth might effectuate the transfer and dissipate the funds, Appellees filed an application for preliminary injunctive relief in the nature of a temporary restraining order. They alleged that the only way to preserve the status quo pending the outcome of the litigation would be to retain the monies in the MCARE Fund, since there was no guarantee that the Commonwealth could reconstitute the funds from any other source. The Commonwealth responded that a preliminary injunction was unwarranted because, inter alia, it was not needed to prevent immediate and irreparable harm. See generally Warehime v. Warehime, 580 Pa. 201, 209-10, 860 A.2d 41, 46-47 (2004) (reciting the six prerequisites that a party must establish to obtain preliminary injunctive relief, including a showing that such relief is necessary to prevent immediate and irreparable harm). The Commonwealth suggested, in this regard, that it could "make [Appellees] whole" by depositing $100 million back into the MCARE Fund in the event of an adverse judgment. Commonwealth's Memorandum in Opposition to Petitioners' Application for Special Relief in the Nature of a Temporary Restraining Order at 15, reproduced in R.R. 202a. By order dated October 19, 2009, the

[7] The Treasury Department was later dismissed from the actions on the basis of a stipulation entered by the parties.

Commonwealth Court expressed agreement with the Commonwealth's position in this regard, and denied the requested relief. The court noted, in particular, that Appellees based their irreparable-harm assertion on an assumption that the Commonwealth would not honor a final judicial order, which amounted to "pure speculation." HAP v. Commonwealth, 522 & 523 M.D. 2009, Order at 6 (Pa. Cmwlth. Oct. 19, 2009), reproduced in R.R. 216a. Thereafter, the Treasury Department effectuated the $100 million transfer on October 30, 2009.

The petitions were eventually consolidated, whereupon Appellees filed an application for summary relief. See Pa.R.A.P. 1532(b). On April 15, 2010, the Commonwealth Court granted Appellees' request in a published opinion, holding that the transfer of monies from the MCARE Fund to the General Fund was unlawful in that it impaired Appellees' vested rights. See Hosp. & Healthsystem Ass'n of Pa. v. Commonwealth, 997 A.2d 392, 401 (Pa. Cmwlth. 2010) (en banc) ("HAP I").[8]

First, the court disagreed with the Commonwealth's assertion that Appellees were not entitled to summary relief because there were material facts in dispute and

[8] Because the accompanying order granted the application for summary relief without further elaboration, see id. at 403, it implicitly subsumed a directive to the Commonwealth to return $100 million to the MCARE Fund. See Application for Summary Relief, at 9, ¶44, reproduced in R.R. 226a (reflecting that the prayer for relief includes a request for such a directive).

Separately, on the same day the Commonwealth Court also granted summary relief to PAMS and several physicians in a distinct matter, in which the petitioners challenged a portion of Act 50 that repealed the MCARE Act's Health Care Provider Retention Program and directed the transfer of $708 million from the Health Care Provider Retention Account ("HCPRA") to the General Fund. See Pa. Med. Soc'y v. Dep't of Pub. Welfare, 994 A.2d 33 (Pa. Cmwlth. 2010) (en banc) ("PAMS I"). This Court reversed, concluding that any prospective transfers from the HCPRA to the MCARE Fund were discretionary, and hence, Appellees had no vested entitlement to the funds in question. See Pa. Med. Soc'y v. Dep't of Pub. Welfare, 614 Pa. 574, 603-04, 39 A.3d 267, 285-86 (2012) ("PAMS II").

discovery remained outstanding, reasoning that the issue before the court regarding the lawfulness of the $100 million transfer was a question of law that needed no additional factual development. See id. at 396-97 & n.9. Next, the court rejected the Commonwealth's contention that Appellees did not have standing to bring their respective actions. Finding that the transfer of $100 million from the MCARE Fund diverted those monies from their intended purpose of providing insurance coverage to participating health care providers and prevented them from ultimately being refunded to those providers upon the MCARE Fund's termination, the court concluded that Appellees were aggrieved and had standing to bring the present legal challenge. See id. at 397-98.

With respect to Appellees' argument that they have vested rights in the monies in the MCARE Fund, the majority acknowledged that the General Assembly is free to repeal and amend legislation, but observed that Section 1976 of the Statutory Construction Act, as well as the Remedies Clause of the Pennsylvania Constitution, protect vested rights and accrued causes of action from impairment by subsequent legislation. See PA. CONST. art. I, §11 ("[E]very man for an injury done him . . . shall have remedy by due course of law[.]"); 1 Pa.C.S. §1976(a) ("The repeal of any civil provisions of a statute shall not affect or impair any . . . right existing or accrued . . .."). The court indicated, first, that "the depletion of the MCARE Fund leaves participating providers with a deficit they must make up in the event that claims must be paid thereafter." HAP I, 997 A.2d at 400. It then noted that Sections 712(a) and 712(k) of the MCARE Act guarantee that the monies in the MCARE Fund will be used for MCARE-related purposes or returned to contributing health care providers upon the fund's termination. Particularly in light of this latter observation, the Commonwealth Court ultimately held that Appellees have a vested entitlement – rising above the level

of a "mere expectation" – to have the monies used for those purposes, and that such a right "cannot be extinguished by the addition of Section 1717.1-K of the Fiscal Code." Id. at 401.

As to Appellees' alternative argument, the court concluded that the transfer did not implicate uniformity concerns. See PA. CONST. art. VIII, §1 ("All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws."). The court reasoned that, because the assessments paid into the MCARE Fund are intended to reduce the high costs of medical liability insurance, are placed in a special fund within the state treasury, and do not raise revenue or generate interest income for the Commonwealth, the assessments are akin to license fees, rather than taxes that must conform to uniformity requirements. See HAP I, 997 A.2d at 402.

Judge (now President Judge) Pellegrini dissented, incorporating the dissent he filed in PAMS I. In that matter, he had concluded that: Appellees did not have vested rights to the monies at issue; there were disputed facts in need of resolution that precluded the grant of summary relief; the members of PAMS and HAP lacked standing; the Commonwealth was unable to comply with the majority's order and transfer funds from the General Fund to any other account without first obtaining express authorization from the General Assembly; the General Assembly was an indispensable party, and as such, its absence deprived the court of jurisdiction; and the entire matter was non-justiciable under the political question doctrine. See id. at 403 (Pellegrini, J., dissenting) (citing PAMS I, 994 A.2d at 46-53 (Pellegrini, J., dissenting)).

The Commonwealth appealed to this Court, raising threshold issues pertaining to justiciability and standing, arguing that Appellees had no vested interest in the money

that was transferred to the General Fund, and contending that summary relief was premature because contested factual issues remained, requiring further discovery.

II. Justiciability

A. Political Question

One threshold question forwarded by the Commonwealth pertains to whether this case is non-justiciable under the political-question doctrine, a principle that derives from the separation of powers among the three coordinate branches of government. See Pa. Sch. Bds. Ass'n v. Commonwealth Ass'n of Sch. Adm'rs, 569 Pa. 436, 451, 805 A.2d 476, 484-85 (2002). The Commonwealth notes that, in Baker v. Carr, 369 U.S. 186, 211, 82 S. Ct. 691, 706 (1962), the Supreme Court determined that the judiciary should not reach the merits of a dispute, inter alia, where the actions being challenged are constitutionally committed to another branch of government. The Commonwealth maintains that Appellees are asking this Court to dictate how the General Assembly should budget and appropriate funds, and that such functions are constitutionally committed to the executive and legislative branches.[9]

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[9] The Commonwealth also suggests that it lacks the power to transfer money back into the MCARE Fund and, as such, it cannot comply with any remedy requiring such a monetary transfer. See Brief for Commonwealth, at 49. As Appellees correctly note, however, see Brief for Appellees at 50-51, the Commonwealth is judicially estopped from making this argument because, as explained, it prevailed on an opposite contention when opposing Appellees' request for a preliminary injunction. See generally New Hampshire v. Maine, 532 U.S. 742, 749, 121 S. Ct. 1808, 1814 (2001) (stating that judicial estoppel "prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase." (quoting Pegram v. Herdrich, 530 U.S. 211, 227 n.8, 120 S. Ct. 2143, 2153 n.8 (2000))); In re Estate of Bullotta, 575 Pa. 587, 591, 838 A.2d 594, 596 (2003) (observing that litigants may not "play[] fast and loose" with the courts by "switching positions as required by the moment" (internal quotation marks and citations omitted)). Moreover, this Court may determine the requirements of the law whether or not our role extends to (continued…)

Appellees respond that, although this case may have financial implications for the Commonwealth, that is true of many judicial decisions involving the Commonwealth. They reason that courts should not shrink from their duty to protect citizens' constitutional rights, whether or not the dispute arises in a political context. Appellees also proffer that the Commonwealth waived this issue by failing to raise it before the Commonwealth Court.

"Ordinarily, the exercise of the judiciary's power to review the constitutionality of legislative action does not offend the principle of separation of powers." Sweeney v. Tucker, 473 Pa. 493, 508, 375 A.2d 698, 705 (1977) (citing Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803)); see also Powell v. McCormack, 395 U.S. 486, 549, 89 S. Ct. 1944, 1978 (1969) ("Our system of government requires that . . . courts on occasion interpret the Constitution in a manner at variance with the construction given the document by another branch. The alleged conflict that such an adjudication may cause cannot justify the courts' avoiding their constitutional responsibility."). Still, judicial abstention under the political-question precept may be implicated in certain limited settings, such as where it is demonstrable from the constitution's text that the matter in question is committed to the political branches, or where there is an "unusual need for unquestioning adherence to a political decision already made." Baker, 369 U.S. at 217, 82 S. Ct. at 710.[10]

(…continued)
directing how compliance with the law will be effectuated. See Thornburgh v. Lewis, 504 Pa. 206, 212, 470 A.2d 952, 955 (1983).

[10] The often-quoted passage from Baker states:

> Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate

(continued…)

In Sweeney, this Court highlighted a difference between controversies where the judiciary determines whether another branch did or did not act within the power conferred on it by the Constitution, and matters involving non-justiciable political questions. Drawing on scholarship, Sweeney indicated that cases falling into the latter category occur where the determination of whether the government acted appropriately has itself been "entrusted exclusively and finally to the political branches of government for self-monitoring." Sweeney, 473 Pa. at 509, 375 A.2d at 706 (quoting Louis Henkin, Is there a "Political Question" Doctrine?, 85 YALE L.J. 597, 599 (1976)).

To illustrate, Sweeney referenced Powell, which involved whether the House of Representatives could refuse to seat a duly-elected member. The challenge was deemed justiciable because the Constitution sets forth express qualifications for membership, and Congress is not at liberty to add new qualifications. See Powell, 395 U.S. at 547-48, 89 S. Ct. at 1977-78. Quoting from Justice Douglas's concurrence, the Sweeney Court continued that a challenge to the expulsion of an already-seated member for misconduct, see U.S. CONST. art. I, §5 (permitting Congress to "punish its Members for disorderly Behaviour" and to expel a member by two-thirds vote), might be non-justiciable, since the grounds for punishment or expulsion of a member are

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(…continued)

> political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Id.

committed by the Constitution to the House's internal rules. See Sweeney, 473 Pa. at 512, 375 A.2d at 707. Consistent with Sweeney, a plurality of this Court in Blackwell v. City of Philadelphia, 546 Pa. 358, 684 A.2d 1068 (1996), developed that, although there is no definitive "semantic cataloguing" of cases in which a non-justiciable political question is raised, as a general proposition courts "refuse to scrutinize a legislature's choice of, or compliance with, internal rules and procedures," so long as the legislative body or its members "did not violate any constitutional or statutory provision." Id. at 365, 684 A.2d at 1071.[11]

Finally, the need for courts to fulfill their role of enforcing constitutional limitations is particularly acute where the interests or entitlements of individual citizens are at stake. See Sweeney, 473 Pa. at 517, 375 A.2d at 709 ("[T]he political question doctrine is disfavored when a claim is made that individual liberties have been infringed."). Drawing upon this Court's decision in Consumer Party of Pennsylvania v. Commonwealth, 510 Pa. 158, 507 A.2d 323 (1986), overruled on other grounds by

[11] Compare, e.g., Mapp v. Lawaetz, 882 F.2d 49, 54 (3d Cir. 1989) (refusing to reach the merits of a complaint alleging that the Virgin Islands legislature failed to adhere to an internal rule requiring a two-thirds majority vote to remove a member for misconduct), and Blackwell, 546 Pa. at 368, 684 A.2d at 1073 (finding a dispute non-justiciable where the plaintiff asserted that the city council violated its own rules in discharging a council member's special assistant) (plurality in relevant part), with Zemprelli v. Daniels, 496 Pa. 247, 258, 436 A.2d 1165, 1170 (1981) (holding that a justiciable question was presented where the issue was whether an internal rule of the state Senate concerning the confirmation of gubernatorial appointments was consistent with the state Constitution's requirements for confirmation), Sweeney, 473 Pa. at 522, 375 A.2d at 712 (finding that the political question doctrine did not preclude judicial review of a claim that the expulsion of a member of the Pennsylvania House of Representatives from his seat violated his federal constitutional rights), and Pa. Sch. Bds. Ass'n, 569 Pa. at 451-52, 805 A.2d at 485 (determining that the political question doctrine did not prevent the Court from deciding the validity of legislation which was challenged based on Article III, Section 4 of the Pennsylvania Constitution, which requires every bill to be considered on three separate days in each House).

Pennsylvanians Against Gambling Expansion Fund, Inc. v. Commonwealth, 583 Pa. 275, 316-17, 877 A.2d 383, 408 (2005), the Commonwealth Court has explained that:

> A determination that an issue is a nonjusticiable political question is essentially a matter of judicial abstention or restraint. As our Supreme Court has said: "To preserve the delicate balance critical to a proper functioning of a tripartite system of government, this Court has exercised restraint to avoid an intrusion upon the prerogatives of a sister branch of government. . . ."
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> Here, Petitioners allege various constitutional violations. In such cases, we will not abdicate our responsibility to "insure that government functions within the bounds of constitutional prescription . . . under the guise of deference to a co-equal branch of government. . . . [I]t would be a serious dereliction on our part to deliberately ignore a clear constitutional violation."

Jubelirer v. Singel, 162 Pa. Cmwlth. 55, 66-67, 638 A.2d 352, 358 (1994) (quoting Consumer Party, 510 Pa. at 176-78, 507 A.2d at 332-333).

As in Jubelirer, Appellees here allege constitutional violations, namely, that Act 50 violates their constitutionally-guaranteed rights to due process and uniformity of taxation. This is significant because, regardless of the extent to which the political branches are responsible for budgetary matters, they are not permitted to enact budget-related legislation that violates the constitutional rights of Pennsylvania citizens. Applying the guidelines set forth in Baker, moreover, we find that determining whether Act 50's transfer of $100 million from the MCARE Fund to the General Fund violated the Constitution is not a matter that has been textually committed to a coordinate branch of government, nor is there an unusual need for unquestioning adherence to the legislative decision already made, particularly as the Commonwealth has represented that it can comply with an order granting relief. Furthermore, this case does not present any of the other characteristics of a non-justiciable political question mentioned in Baker. For

example, there is no "potentiality of embarrassment from multifarious pronouncements by various departments on one question." See supra note 10. Notably, in this respect, the political question doctrine does not exist to remove a question of law from the Judiciary's purview merely because another branch has stated its own opinion of the salient legal issue. See Council 13, AFSCME, AFL-CIO ex rel. Fillman v. Rendell, 604 Pa. 352, 373, 986 A.2d 63, 76 (2009).[12] Hence, we conclude Appellees have not asserted a non-justiciable political question.[13]

[12] The Commonwealth states briefly that there are no judicially manageable standards to apply, and that the constitutionality of the challenged legislation can only be decided with an initial, legislative policy determination. "Simply put," the Commonwealth continues, "where is the money to come from and what other programs should be defunded?" Brief for Commonwealth at 48. Such questions need not be answered in order to resolve whether the initial transfer of the money violated Appellees' constitutional rights. As will be seen, moreover, there are judicially manageable standards for making that assessment.

The Commonwealth also asserts that any ruling in favor of Appellees would express a "lack of the respect due coordinate branches of the government." Id. (quoting, indirectly, Baker, 369 U.S. at 217, 82 S. Ct. at 710). The Commonwealth appears to interpret the "respect" criterion more broadly than Baker intended. See, e.g., United States v. Munoz-Flores, 495 U.S. 385, 390, 110 S. Ct. 1964, 1968 (1990) ("The Government may be right that a judicial finding that Congress has passed an unconstitutional law might in some sense be said to entail a 'lack of respect' for Congress' judgment. But disrespect, in the sense the Government uses the term, cannot be sufficient to create a political question. If it were, every judicial resolution of a constitutional challenge to a [statute] would be impermissible." (emphasis in original)).

[13] In view of our holding, we need not presently decide whether a political-question argument may be waived – an issue on which this Court has not spoken. See generally Commonwealth v. Hughes, 581 Pa. 274, 304& n.12, 865 A.2d 761, 778-79 & n.12 (2004) (for prudential reasons, declining to resolve whether a competency claim may be waived where the claim lacked merit). We believe it prudent to leave that question for a case where its resolution is material to the outcome, particularly given the lack of focused advocacy on the issue from both sides of the present dispute.

B. Standing

The Commonwealth also contends that Appellees lack standing to challenge the $100 million transfer. Primarily, it alleges that Appellees lack a direct and immediate interest in the resolution of the legal question presented. Its argument has two parts. First, it argues that any prospective distribution of the remaining balance in the MCARE Fund to health care providers upon the fund's termination is remote and speculative. Second, it asserts that the statutory formula for the computation of yearly assessments does not depend, directly or indirectly, on the fund's balance at the end of the preceding year. Hence, the argument goes, Appellees' future assessments would not be reduced even if their legal argument prevails and $100 million is transferred back into the MCARE Fund. See Brief for Commonwealth at 44-46.

"The requirement of standing under Pennsylvania law is prudential in nature, and stems from the principle that judicial intervention is appropriate only where the underlying controversy is real and concrete, rather than abstract." City of Phila. v. Commonwealth, 575 Pa. 542, 559, 838 A.2d 566, 577 (2003). "A party has standing to bring a cause of action if it is 'aggrieved' by the actions complained of, that is, if its interest in the outcome of the litigation is substantial, direct, and immediate." City of Phila. v. Schweiker, 579 Pa. 591, 604, 858 A.2d 75, 83 (2004). A "substantial" interest is one that surpasses the common interest of all citizens in procuring obedience to the law. See Bergdoll v. Kane, 557 Pa. 72, 84, 731 A.2d 1261, 1268 (1999) (quoting S. Whitehall Twp. Police Serv. v. S. Whitehall Twp., 521 Pa. 82, 86-87, 555 A.2d 793, 795 (1989)). A "direct" interest requires a showing that the matter complained of caused harm to the party. See id. An "immediate" interest involves the nature of the causal connection, see id., and signifies that judicial intervention is ordinarily inappropriate

when the harm alleged is remote and speculative. See City of Phila., 575 Pa. at 561, 838 A.2d at 578.

Appellees averred in their petitions that the $100 million transfer diverted monies that they paid into the MCARE Fund under compulsion of law and, as such, (a) violated their right, protected by the Due Process Clause, to have the funds used to satisfy judgments against them pursuant to the MCARE Act, and (b) constituted an impermissible, non-uniform tax upon health care providers. They also claimed that the re-infusion of $100 million back into the MCARE Fund would reduce their assessments under the statutory formula (an issue on which litigation is pending, as discussed below), and would additionally act as a buffer to protect them against spikes in assessments due to unfunded liabilities.

We conclude that Appellees' claims satisfy all three prongs of the standing test as enumerated above. Prior to the enactment of Act 50, the money in the MCARE Fund was legally dedicated for MCARE purposes only, i.e., to satisfy judgments against Appellees. Appellees' interest in having that money used for such purposes clearly surpasses the common interest of all citizens in seeing that laws are obeyed. Also, the transfer of funds is the direct and immediate cause of the alleged infringement of Appellees' vested entitlements, as well as the alleged non-uniform taxation. In view of these circumstances, we conclude that the providers are aggrieved parties entitled to pursue both of their causes of action.[14] That being the case, moreover, we need not

[14] It also appears that the Hospital & Healthsystem Association of Pennsylvania and the Pennsylvania Medical Society each has associational standing as a representative of its members. See Warth v. Seldin, 422 U.S. 490, 511, 95 S. Ct. 2197, 2211 (1975). Regardless, the fact that the individual providers have standing is alone sufficient for this Court to reach the merits. See City of Phila., 575 Pa. at 563 n.8, 838 A.2d at 579 n.8 (2003) (where a city and its mayor sought relief, the Court did not need to consider whether the mayor had standing after it determined that the city had standing).

determine whether Act 50's effect on the distribution of monies upon termination of the MCARE Fund, potentially many years in the future, is too remote or speculative to confer standing.

III. Merits

A. Vested Interests

We now turn to the merits of Appellees' claim that, at the time Act 50 was passed, they had a constitutionally-protected vested interest in having existing MCARE monies used for MCARE purposes, such that the interest could not be infringed by the legislation under review. Appellees' present advocacy intermixes concepts of vested rights under the Due Process Clause and causes of action under the Remedies Clause. See Brief for Appellees at 29-41. Although they place much of their emphasis on the Remedies Clause, see PA. CONST. art. I, §11 ("All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law[.]"), we consider the due process aspect of Appellees' argument sufficiently developed to preserve that claim as such. See, e.g., Brief for Appellees at 29-30 (arguing that due process prohibits interference with vested rights, and quoting cases reflecting this prohibition).[15] Moreover, we have often considered the Remedies Clause as being directed to protecting causes of action (and defenses) from impairment

[15] The state and federal due process provisions, see PA. CONST. art. I, §§1, 9; U.S. CONST. amend. XIV, are "substantially equivalent" in their protective scope. Krenzelak v. Krenzelak, 503 Pa. 373, 382, 469 A.2d 987, 991 (1983). Appellees each raised due process claims in the first count of their respective Petitions for Review, see Petition for Review of Hosp. & Healthsystem Ass'n of Pa., et al., at 8-10, reproduced in R.R. 26a-28a; Petition for Review of Pa. Med. Soc'y, at 7-9, reproduced in R.R. 53a-55a, and have, throughout the litigation, pursued due process arguments based on an asserted impairment of vested rights. See Petitioners' Brief in Support of Application for Summary Relief, at 13-23, reproduced in R.R. 413a-423a; Petitioners' Reply Brief in Support of Application for Summary Relief, at 9-17, reproduced in R.R. 935a-943a.

after they have accrued.[16] Because Appellees do not contend that Act 50 undermined a cause of action that accrued in their favor during the pre-enactment timeframe, but instead forward averments concerning their alleged interests vis-à-vis the use of certain funds, we believe it would be most straightforward to treat their vested-rights claim as primarily implicating protections under the Due Process Clause.

The Commonwealth argues that Appellees did not have a vested right in the MCARE monies because the MCARE fund is not a trust fund. Although its predecessor, the Medical Professional Liability Catastrophe Loss Fund (the "CAT Fund"), see 40 P.S. §1303.701(d) (superseded); see generally Heim v. MCARE Fund, 611 Pa. 1, 3-4, 23 A.3d 506, 507-08 (2011), was established as a trust fund, the MCARE Fund, observes the Commonwealth, is denoted as a "special" fund within the State Treasury. The Commonwealth proffers, in this regard, that the Governor's Office Manual of Accounting defines a trust fund as a fund containing assets held in trust for someone else, whereas it states that a special fund is subject to budgetary control and, as such, may be redirected to other uses based on legislative changes.

The Commonwealth additionally maintains that nothing in the MCARE Act created vested rights as to the use of MCARE monies. It acknowledges that Section 712(a) of the MCARE Act states that Fund monies "shall be used to pay claims against" health care professionals. The Commonwealth reasons, however, that statutory pledges are unenforceable as against subsequent General Assemblies, and that, in any event, the money has never been promised to providers themselves, but to the victims

[16] See, e.g., Ieropoli v. AC&S Corp., 577 Pa. 138, 149-51, 842 A.2d 919, 926-27 (2004) (quoting Menges v. Dentler, 33 Pa. 495, 498-99 (1859), and Lewis v. Pa. R.R. Co., 220 Pa. 317, 323-24, 69 A. 821, 823 (1908)); Gibson v. Commonwealth, 490 Pa. 156, 160-61, 415 A.2d 80, 83 (1980); see also Konidaris v. Portnoff Law Assocs., 598 Pa. 55, 75, 953 A.2d 1231, 1242 (2008) (referencing "our Court's extension of the Remedies Clause to defenses").

of their alleged malpractice. As well, the Commonwealth develops that, in the pre-budget-crisis timeframe, the fund received well over $100 million derived from cigarette taxes and motor vehicle violation surcharges, which was used to fund abatements to provider assessments under the state's Health Care Provider Retention Program (addressed more fully in PAMS II). Thus, in the Commonwealth's view, it was entitled to reallocate at least $100 million on that basis alone. The Commonwealth contends further that the MCARE Fund has always met its statutory obligations, and there is no reason to believe that any future claim will remain unpaid as a result of the transfer of $100 million. Overall, the Commonwealth argues that, to hold that the already-paid-in money could not be diverted to another governmental use would restrain legislative bodies from reacting to changing priorities and circumstances.

Alternatively, the Commonwealth asserts that, even assuming Appellees had a vested interest in the money transferred out of the MCARE Fund, Act 50 did not impair that interest, for two reasons. First, the Commonwealth avers that the funding formula for calculating assessments is independent of the balance in the fund and, as such, it is independent of the amount diverted from the fund. Second, the Commonwealth maintains that, because the MCARE Fund has covered all claims for which it has been liable, Appellees have received the benefits to which they were entitled under the MCARE Act. Rather than suffering an impairment of a vested right, according to the Commonwealth, Appellees have received – and will continue to receive – fair exchange for their assessments.[17]

[17] The Commonwealth also argues that the provision for distribution of proceeds under Section 712(k) decades in the future did not create any vested right harmed by the 2009 legislation. We will discuss this aspect of the MCARE Act below, in addressing whether the transferred funds amounted to surplus monies within the MCARE Fund.

Appellees respond that their interest in the transferred money was indeed vested because Section 712 establishes a quid pro quo whereby health care providers are required to pay assessments to be licensed to practice in Pennsylvania, while the money in the fund is to be used to satisfy judgments against them. In this respect, Appellees note that the language of Section 712(a) is mandatory, providing that MCARE money "shall," rather than "may," be used to pay claims against health care providers. See 40 P.S. §1303.712(a). Appellees proffer that the mandatory nature of the directive remains in force regardless of whether some monies have been included in the fund from non-provider sources such as cigarette taxes or vehicle violations, and regardless of whether the Governor's manual classifies the fund as a trust fund or a special fund.

Further, Appellees suggest that Act 50 impaired their vested rights because every dollar taken from the MCARE Fund is necessarily a dollar that providers will have to pay into the fund in the future to cover claims. Thus, because the MCARE Fund pays liabilities by levying annual assessments according to the statutory funding formula, and future liabilities are unfunded, Appellees reason that they will be subject to higher annual assessments to pay for present and future claims as a result of Act 50. In this respect, they also argue that, in the event the MCARE Fund has insufficient funds to pay claims and expenses, it will have to borrow money, a cost providers will have to bear via the following year's assessments. Accordingly, Appellees state that it is immaterial whether they have received all to which they are entitled, as the Commonwealth highlights. Rather, Appellees aver that, regardless of the MCARE Fund's history of claims payments leading up to Act 50, providers remain obligated to pay assessments sufficient to cover claims that will become payable in the future, and that the subtraction of a substantial amount of money from the fund to balance the 2009-10 budget cannot help but increase their future payments.

"An application for summary relief may be granted if a party's right to judgment is clear and no material issues of fact are in dispute." Jubelirer v. Rendell, 598 Pa. 16, 28, 953 A.2d 514, 521 (2008) (internal quotation marks and citation omitted); see Pa.R.A.P. 1532(b). In ruling on a request for summary relief, the Commonwealth Court views the evidence in the light most favorable to the non-moving party, and enters judgment only if there is no genuine issue as to any material fact and the right to relief is clear as a matter of law. See Chester Cmty. Charter Sch. v. Dep't of Educ., 44 A.3d 715, 720 n.6 (Pa. Cmwlth. 2012).[18] In reviewing the Commonwealth Court's decision to grant summary relief, this Court also considers the record favorably to the non-moving party and resolves all doubts as to the existence of a genuine issue of material fact against the moving party. See PAMS II, 614 Pa. at 589, 39 A.3d at 277. A fact is considered material if its resolution could affect the outcome of the case under the governing law. See Strine v. MCARE Fund, 586 Pa. 395, 402, 894 A.2d 733, 738 (2006) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 2510 (1986)).

Applying these principles to the present case, it is important to note, preliminarily, that the challenged provision of the Fiscal Code is not directed to any funding to be obtained after the date of its enactment. Rather, it mandates that $100 million that had already been paid into the MCARE Fund be transferred to the General Fund. See 72 P.S. §1717.1-K(1). At the time those monies were paid in, the governing statute provided that they "shall be used to pay claims against participating health care providers." 40 P.S. §1303.712(a). Such use was thus a legal consequence of their payment at the time they were supplied. The change in use dictated by Section 1717.1-

[18] The summary relief standard under this rule is similar to the summary judgment standard under the Pennsylvania Rules of Civil Procedure. See PAMS II, 614 Pa. at 589 n.11, 39 A.3d at 276 n.11; Brittain v. Beard, 601 Pa. 409, 417, 974 A.2d 479, 484 (2009); Pa.R.A.P. 1532, Official Note.

K(1) alters that consequence and, as such, is retrospective in nature. See generally Landgraf v. USI Film Prods., 511 U.S. 244, 270, 114 S. Ct. 1483, 1499 (1994) (indicating that a statute is "retrospective" or "retroactive" if it "attaches new legal consequences to events completed before its enactment"); see also id. at 269 n.23, 114 S. Ct. at 1499 n.23 (citing authorities). The retrospective character of Section 1717.1-K(1), in turn, implicates this Court's recognition that due process norms limit the government's ability to extinguish vested rights (or entitlements) through retroactive legislation. See, e.g., Krenzelak v. Krenzelak, 503 Pa. 373, 388, 469 A.2d 987, 994 (1983); Bellomini v. State Employees' Ret. Bd., 498 Pa. 204, 212, 445 A.2d 737, 741 (1982) (plurality). The question becomes, then, whether the health care providers had a vested entitlement to have the pre-enactment assessment monies used for MCARE purposes.

The MCARE Act is unusual in that it amounts to something very similar to a government-run supplemental insurance program. It was enacted to abate a malpractice insurance exigency serious enough to require legislative intervention. As such, MCARE comprises social legislation specifically designed (among other things) to ensure that Pennsylvania citizens have access to the care they need by incentivizing health care professionals to stay in Pennsylvania, or move to Pennsylvania, and fulfill those needs. See, e.g., 40 P.S. §§1303.102 ("It is the purpose of th[e MCARE] act to ensure that medical care is available in this Commonwealth through a comprehensive and high-quality health care system."); 1303.502 ("Ensuring the future availability of and access to quality health care is a fundamental responsibility that the General Assembly must fulfill as a promise to our children, our parents and our grandparents."); 1303.514. To this end, MCARE conditions a medical provider's ability to practice in Pennsylvania on participation in the MCARE Fund, which entails the payment of substantial monetary

assessments within a statutory scheme that mandates that all such assessments be used to satisfy claims against the providers. See 40 P.S. §1303.712(a). This latter condition is the linchpin to having the system work as intended. The assessment program was never intended as a general mechanism to raise tax revenue and, furthermore, there is a rational relationship between the monies paid in and their mandated use under Section 712(a) so as to prevent the condition-of-doing-business aspect of MCARE from having extortive overtones.

Within that context, the 2009 budget law redirected the MCARE Fund's monies to close a general budgetary gap – a measure having nothing to do with the MCARE statute or its purposes. We mention this not as a criticism of the Legislature's judgment, since this Court is not tasked with evaluating the wisdom of that body's policy choices. Rather, the point is that the Legislature encouraged providers to rely on a scheme that it designed, participation in which was mandatory, and under which assessments extracted from medical providers were required to be used in a manner rationally related to the carrying on of their practices. Accordingly, the providers were led to believe that they could depend upon the program as established in making major practice-related decisions.

This state of affairs elevated MCARE Fund monies above the status of standard budgeting allocations that all affected parties understand may be altered at will by the Legislature. Instead, the Legislature effectively said to the providers, "you must supply these funds, and they will be used to satisfy judgments against you."[19] That being the

[19] Although, as the Commonwealth points out, some of the monies in the MCARE Fund may have originated from sources other than assessments, the fact remains that all such monies were commingled and, upon entering the MCARE Fund, were dedicated to the fund's purposes.

(continued…)

case, we conclude that the MCARE Fund, although labeled a "special fund," is in the nature of a trust fund whose monies are held for the purpose designated by statute. See Daugherty v. Riley, 34 P.2d 1005, 1010 (Cal. 1934) (reaching a similar conclusion with regard to a "special fund" set aside for exclusive use by a state commission on corporations). Since that purpose involved satisfying judgments against the health care providers, such providers retained a vested entitlement under the Due Process Clause to have the money utilized in the manner directed by statute. See generally Konidaris v. Portnoff Law Assocs., 598 Pa. 55, 74, 953 A.2d 1231, 1242 (2008) (explaining that a "vested" right is one that rises above the level of a "mere expectation" that existing law will continue in place).[20] Contrary to the Commonwealth's argument, moreover, it is inconsequential that MCARE monies are never paid directly to providers, since they are paid to malpractice plaintiffs as a means of satisfying judgments against providers. Accord Wis. Med. Soc'y v. Morgan, 787 N.W.2d 22, 45 (Wis. 2010) ("Under this arrangement, the Fund's payment of excess judgments benefits the health care

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The Pennsylvania Senate, as amicus, adds that the General Assembly must retain the authority to "re-appropriate [funds] as the public's needs change from year-to-year," and emphasizes that the 2009 budget crisis was severe. Senate's Amicus Brief at 15-16. To clarify, we are not suggesting that Section 712(a) binds subsequent legislatures on how MCARE monies may be used going forward. The question is whether the General Assembly was free to redirect assessment monies already paid into the MCARE Fund at the time the 2009 budget legislation was enacted. If the Constitution precluded it from doing so, the severity of the fiscal crisis is immaterial, as the Senate acknowledges. See id. at 15.

[20] Accord Bible v. Dep't of Labor & Indus., 548 Pa. 247, 261, 696 A.2d 1149, 1156 (1997) (quoting Lewis v. Pa. R.R. Co., 220 Pa. 317, 324, 69 A. 821, 823 (1908)); see also Landgraf, 511 U.S. at 265-66, 114 S. Ct. at 1497 (warning that "settled expectations should not be lightly disrupted," and highlighting the importance of scrutinizing retrospective laws with particular caution because of the Legislature's "unmatched powers . . . to sweep away settled expectations suddenly and without individualized consideration").

providers because the payments are, in essence, made on the health care providers' behalf. They have a property interest in the payment of these excess judgments."); cf. Alliance of Am. Insurers v. Chu, 571 N.E.2d 672, 678 (N.Y. 1991) (invalidating a law redirecting to the state's general fund monies earned by an insurance security fund before the law's enactment, where such monies had, in the pre-enactment timeframe, been statutorily mandated to be returned to the contributors or credited toward their future assessments).

On the other hand, courts have recognized that legislative bodies retain authority to control the fate of special funds in order to serve the changing needs of the government. See Washington, D.C. Ass'n of Realtors, Inc. v. District of Columbia, 44 A.3d 299, 305 & n.28 (D.C. 2012) (collecting cases for the "principle that a state legislature may, by statute, divert special funds set aside for particular purposes to a different purpose so long as doing so would not contravene a specific constitutional provision controlling the fund or breach a contractual obligation"). While that precept's application may be limited in connection to monies held in trust or otherwise protected by vested entitlements as to the manner of their use, such authority ordinarily remains with regard to any surplus monies that continue in the fund after the accomplishment of its purposes. See 81A C.J.S. States §387 (2012) (indicating that a surplus in a trust fund may be diverted notwithstanding that legislatures may not ordinarily authorize a diversion of special funds where such a diversion would be unconstitutional or amount to a breach of trust or contract); Daugherty, 34 P.2d at 1010 (suggesting that if and when the commission on corporations no longer needs the funds held in trust, the state legislature may use them for other public purposes).[21] Whether the contested $100

[21] In dissent, Mr. Justice Baer relies on Daugherty's holding to the effect that monies in a trust fund cannot be supplanted if they are necessary to accomplish the fund's objectives. We have no disagreement with that proposition, and reference Daugherty (continued…)

million, or some part of it, represented a surplus in the MCARE Fund at the time Act 50 was passed is therefore a fact which is material to the outcome of Appellees' due-process/vested-rights claim.

Notably, the question was in dispute during the proceedings in the Commonwealth Court. As the Commonwealth correctly observes, the court's summary disposition rested, at least in part, on its assumptions that "the depletion of the MCARE Fund leaves participating providers with a deficit they must make up in the event that claims must be paid thereafter," HAP I, 997 A.2d at 400, and that "the future obligations of the MCARE Fund are in jeopardy due to the transfer of the $100 million," id. at 396 n.9. See Brief for Commonwealth at 36, 52. The evidentiary record, however, is not entirely clear on this point and, moreover, includes a declaration by the Insurance Commissioner explaining that, due to the manner in which the fund makes payments and obtains funds, it will have enough money to fulfill all of its obligations in spite of the $100 million transfer. See Declaration of Peter J. Adams, reproduced in R.R. 656a-658a; see also id. at 2 ¶8 (alleging that the MCARE balance was $322 million before the $100 million was transferred).[22] When such evidence is viewed in the light most favorable to the Commonwealth as the non-moving party, it raises a genuine, material

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only insofar as its dispositive and persuasive rationale does not preclude the transfer of monies when they are no longer needed or when such a diversion would not "interfere . . . with the objects for which [the] fund was created." Daugherty, 34 P.2d at 1010.

[22] The declaration was attached as an exhibit to the Commonwealth's Memorandum in Opposition to Petitioners' Application for Summary Relief.

question of fact concerning a possible surplus, which in turn implicates the Legislature's authority with regard to the $100 million, as explained above.[23]

This factual circumstance also serves to highlight a more general legal issue that was never addressed by the Commonwealth Court, namely, how to determine whether a surplus exists within the framework of the MCARE Fund. At least two features of the fund appear relevant to such an inquiry. First, the annual assessment formula does not expressly take into account the size of the reserves already present. This militates in favor of the concept that the diverted monies were surplus funds, unless the formula implicitly accounts for extant reserves.[24] Second, although one could argue that the distribution of remaining funds upon termination of the MCARE Fund under Section 712(k) precludes any possibility of such reserves being characterized as surplus as of the time Act 50 was passed, see, e.g., Dissenting Opinion, slip op. at 8 (Baer, J.), we find it significant that the distribution, if it occurs at all, does not appear likely to take place for at least forty years. Given such a long time interval, the identities of the parties who would receive the money is uncertain, inasmuch as new providers may establish practices and existing providers may cease practicing or leave Pennsylvania during the intervening period.

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[23] As we have determined that the MCARE monies were effectively held in trust, the government bears the burden of demonstrating that the diverted funds were in the nature of a surplus. See 500 James Hance Court v. Pa. Prevailing Wage Appeals Bd., 613 Pa. 238, 272-73, 33 A.3d 555, 575-76 (2011).

[24] The Commonwealth Court recently held that the statutory formula accounts for extant reserves via direct implication of its express language. See Hosp. & Healthsystem Ass'n of Pa. v. Ins. Comm'r, ___ A.3d ___, 2013 WL 4033850 (Pa. Cmwlth. Aug. 9, 2013) (en banc) (petition for allowance of appeal pending at No. 681 MAL 2013). How this affects the determination as to the existence and size of a surplus is to be considered in the first instance by the Commonwealth Court on remand.

In sum, then, we hold that the October 2009 amendment to the Fiscal Code transferring $100 million from the MCARE Fund to the General Fund implicated the providers' due process rights, but that the question of whether the legislation was finally unconstitutional requires further factual development. Accordingly, we will reverse the Commonwealth Court's order granting summary relief and remand for further proceedings.

B. Tax Uniformity

Finally, Appellees seek to preserve the judgment in their favor by renewing an argument they made to the Commonwealth Court, namely, that the $100 million diversion to the General Fund amounts to a discriminatory tax in violation of the Uniformity Clause of the Pennsylvania Constitution. See PA. CONST. art. VIII, §1 (requiring that taxes be (a) uniform on the same class of subjects, and (b) collected under general laws). Appellees submit that the Commonwealth Court improperly disposed of this issue by viewing it as a challenge to the initial collection of the assessments, which the court described as license fees, see HAP I, 997 A.2d at 402, rather than to the transfer of the assessment monies to the General Fund, which Appellees contend converted them into general-revenue taxes. Appellees argue that such a "tax" was non-uniform because there is no logical basis for singling out health care providers to contribute extra funds for the Commonwealth's general expenditures. See Brief for Appellees at 42 ("No reasonable difference exists between health care providers and all other taxpayers sufficient to justify this difference in tax treatment.").[25]

[25] Appellees do not argue that the alleged tax is invalid on the basis that it was not levied under a general law. Also, the Commonwealth has not provided any advocacy on this issue.

In matters of taxation, this Court has historically analyzed the limitations imposed by the state Uniformity Clause and the federal Equal Protection Clause as being "largely coterminous." Clifton v. Allegheny Cnty., 600 Pa. 662, 687 n.21, 969 A.2d 1197, 1212 n.21 (2009).[26] These clauses do not obligate the government to treat all persons identically, but they do assure that all similarly-situated persons are treated alike. See Small v. Horn, 554 Pa. 600, 615, 722 A.2d 664, 672 (1998) (Equal Protection Clause); Leonard v. Thornburgh, 507 Pa. 317, 321, 489 A.2d 1349, 1352 (1985) (Uniformity Clause). Thus, when the Legislature makes a classification in levying a tax, it will survive scrutiny so long as there is some reasonable justification for treating the relevant group of taxpayers differently than others. See id. Indeed, the Legislature has wide discretion in matters of taxation, see Clifton, 600 Pa. at 685, 969 A.2d at 1211, and a taxpayer pursuing a Uniformity Clause challenge has the burden of demonstrating that the classification is unreasonable. See Devlin v. City of Phila., 580 Pa. 564, 588, 862 A.2d 1234, 1249 (2004); see also Wilson Partners, L.P. v. Bd. of Fin. & Revenue, 558 Pa. 462, 471, 737 A.2d 1215, 1220 (1999) ("When challenging a taxing statute, it is the taxpayer's burden to demonstrate, not only that the enactment results in some form of classification, but also that such classification is unreasonable, in that it is not rationally related to any legitimate state purpose.").

Because Act 50 directed the transfer of $100 million from the MCARE Fund to the General Fund in an effort to balance the state budget, Appellees make a colorable argument that that money was, in effect, converted into tax revenue. Nevertheless,

[26] In some contexts the Uniformity Clause has been recognized as reflecting more stringent limitations. See, e.g., Downingtown Area Sch. Dist. v. Chester Cnty. Bd. of Assessment Appeals, 590 Pa. 459, 469 n.9, 913 A.2d 194, 201 n.9 (2006). We do not foreclose the possibility that the Uniformity Clause provides greater protections in other ways as well, based on a developed analysis of its text, history, and meaning. Here, however, the parties have not provided such an analysis.

even if we assume, without deciding, that the $100 million diversion amounted, in practical effect, to a tax on health care providers, it does not follow that the Uniformity Clause has been offended. This is because, as noted, taxing classifications are constitutionally permissible if they are reasonable. In light of our disposition of Appellees' due process claim, there remains an outstanding question of whether the $100 million constituted a surplus. If it did, then that in itself will supply an adequate basis for the legislative treatment of such money differently from the fees paid by other Pennsylvania citizens, particularly in light of the contribution from sources other than provider assessments. Therefore, at the present juncture, Appellees' uniformity theory cannot supply an independent justification for affirmance.

IV. Conclusion

Accordingly, the Commonwealth Court's order granting summary relief to Appellees is reversed and the matter is remanded for further proceedings.

Former Justice Orie Melvin did not participate in the decision of this case.

Mr. Chief Justice Castille and Messrs. Justice Eakin and McCaffery join the opinion.

Mr. Justice Baer files a dissenting opinion.

Madame Justice Todd files a dissenting opinion.