

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION – CIVIL**

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APR - 8 2026
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LANCE HAVER and DENISE DEVLIN,	:	October Term 2025
	:	
Plaintiffs,	:	No. 972
	:	
v.	:	Commerce Program
	:	
SOUTHEASTERN PENNSYLVANIA	:	Control Nos. 25122068, 25126178
TRANSPORTATION AUTHORITY,	:	
	:	
Defendant.	:	

DOCKETED

APR - 8 2026

R. POSTER
COMMERCE PROGRAM

ORDER

AND NOW, this 7th day of April, 2026, upon consideration of the Preliminary Objections filed by Defendant Southeastern Pennsylvania Transportation Authority (“SEPTA”) (CN 25122068) and the Preliminary Objections of Plaintiffs Lance Haver and Denise Devlin to SEPTA’s Preliminary Objections, the Response in Opposition (CN 25126178), and the attached Opinion, it is hereby **ORDERED and DECREED** that:

1. Plaintiffs’ Preliminary Objection to SEPTA’s Preliminary Objections (CN 25126178) is **OVERRULED**.
2. SEPTA’s Preliminary Objections to Plaintiffs’ Amended Complaint are **SUSTAINED IN PART and OVERRULED IN PART** as follows:
 - a. The Preliminary Objection based on jurisdiction and timeliness is **OVERRULED WITHOUT PREJUDICE**.
 - b. The Preliminary Objection based on *lis pendens* is **OVERRULED WITHOUT PREJUDICE**.
 - c. The Preliminary Objection based on standing is **OVERRULED**.

ORDOP-Haver Vs Southeastern Pennsylvania Transportation [RCP]

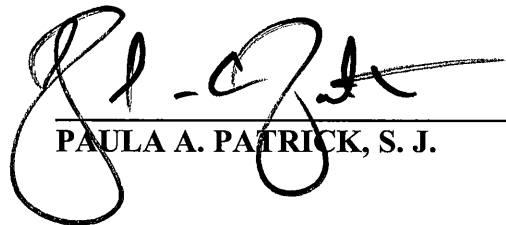


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- d. The Preliminary Objection based on sovereign immunity is **SUSTAINED** as to claims for monetary damages and the claim for monetary damages is **DISMISSED WITH PREJUDICE**. The claims for equitable and declaratory relief may proceed.
- e. The Preliminary Objection for failure to state a claim is **OVERRULE**
- f. The Preliminary Objection to strike scandalous and impertinent matter is **SUSTAINED**, and paragraphs 15, 76 and 98 are **STRICKEN**.

It is further **ORDERED** that SEPTA file an Answer to the Amended Complaint within twenty (20) days from the date this Order is docketed.

BY THE COURT:



PAULA A. PATRICK, S. J.

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
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Defendant.	:	

OPINION

I. INTRODUCTION

Before the Court are the Preliminary Objections filed by Defendant Southeastern Pennsylvania Transportation Authority (“SEPTA”), to Plaintiffs’ Amended Complaint, as well as Plaintiffs’ Preliminary Objections to Defendant’s Preliminary Objections.

This action arises from SEPTA’s implementation of a fare increase in connection with its Fiscal Year 2026 budget. Plaintiffs assert that the fare increase violates SEPTA’s enabling legislation, while SEPTA contends, *inter alia*, that Plaintiffs’ claims are untimely and jurisdictionally barred, duplicative, and legally deficient. For the reasons that follow, Plaintiff’s Preliminary Objections to SEPTA’s Preliminary Objections are Overruled and SEPTA’s Preliminary Objections are overruled in part and sustained in part. ¹

¹ Plaintiffs did not file a response to SEPTA’s Preliminary Objection but elected instead to file preliminary objections to SEPTA’s Preliminary Objections. A response to SEPTA’s preliminary objections is not necessary as the objections can be decided based on the facts alleged in the Amended Complaint.

Preliminary objections may be sustained only in cases that are clear and free from doubt that the pleader will be unable to prove facts legally sufficient to establish a claim for which the trial court may grant relief. *Yocum v. Commonwealth*, 161 A.3d 228, 234 (Pa. 2017). All well-pleaded material facts set forth in the complaint, and all reasonable inferences deducible therefrom, must be accepted as true. *Id.* Any doubt must be resolved in favor of overruling the objections. *Id.* Pa.R.C.P. 1028 governs preliminary objections, including objections based upon lack of jurisdiction, failure to state a claim, and legal insufficiency.

III. DISCUSSION

A. Defendant SEPTA's objection for failing to timely exercise and exhaust administrative remedies denying this Court of Subject Matter Jurisdiction is Overruled without prejudice.

SEPTA's principal argument is that Plaintiffs' claims are jurisdictionally barred because Plaintiffs failed to exercise and exhaust their administrative remedy by failing to file an appeal within thirty (30) days of the fare increase decision pursuant to 42 Pa.C.S. § 5571(b). SEPTA argues that the fare increase is an "adjudication" subject to a 30- day appeal deadline. (Docket (Dkt.) 12-9-25, Preliminary Objection ¶ 56). Upon review of the Amended Complaint, SEPTA's Preliminary Objection is overruled.

The doctrine of exhaustion of administrative remedies "is neither inflexible nor absolute" and exceptions to the rule have been established. *Feingold v. Bell of Pa.*, 383 A.2d 791, 793 (Pa. 1977). Exhaustion "is not intended to set up a procedural obstacle to recovery." *Ohio Cas. Group, Ins. Comp. v. Argonaut Ins. Co.*, 525 A.2d 1195, 1198 (Pa. 1987). Thus, a court may exercise jurisdiction where the administrative remedy is inadequate. *Feingold supra* citing *Borough of Green Tree v. Board of Property Assessments*, 328 A.2d 819 (1974). The mere existence of a remedy does not dispose of the question of its adequacy; the administrative remedy must be "adequate and complete." *Id.*

In this case, Plaintiffs allege that the administrative remedy was frustrated and was not appropriate. Specifically, Plaintiffs allege that SEPTA's enabling act itself requires that the public be given an opportunity to participate meaningfully in hearings concerning fare increases or decreases in service. (Dkt. 11-19-25, Amended Complaint, ¶ 111). However, according to the allegations in the Amended Complaint, SEPTA refused to answer legitimate questions, actively silenced dissenting voices, failed to schedule the hearings in the impacted areas and during a time when working people could attend. (Id.) Plaintiff alleges that these actions by SEPTA frustrated any potential administrative remedy. Given the foregoing allegations, questions of fact exist as to whether the administrative remedies were exhausted or frustrated by SEPTA.

Notwithstanding the foregoing, if the administrative remedies were adequate, there is also factual dispute as to whether the appeal was filed timely. SEPTA argues that the appeal should have been filed thirty days after June 26, 2025, and Plaintiffs argue that the operative date is September 14, 2025. Accepting Plaintiffs' allegations as true, as the Court must at this stage, the timeliness of this action remains a factual question.²

Therefore, the Preliminary Objections based on lack of jurisdiction / untimeliness are overruled without prejudice. SEPTA may raise these arguments again at a later stage following factual development.

C. The Preliminary Objection based on Prior Pending Action is Overruled.

² In the Preliminary Objections to Preliminary Objections, Plaintiffs argue that SEPTA improperly raises what is, in substance, a statute of limitations defense via preliminary objections. While SEPTA frames its objection as jurisdictional and based upon failure to exhaust statutory remedies, the Court need not resolve this characterization at this stage. Because the timeliness issue is not clear on the face of the Amended Complaint, dismissal on this basis would be inappropriate. Therefore, Plaintiffs' Preliminary Objections on this ground is overruled as moot, considering the Court's discussion above.

SEPTA argues that this action is barred because Plaintiff Haver previously filed a related action involving similar claims.³ The doctrine of *lis pendens*, also known as prior pending action, requires identity of: 1) the parties, 2) the causes of action, and 3) the relief sought. *Virginia Mansions Condominium Ass'n v. Lampl*, 552 A.2d 275, 277 (Pa. Super.1988). The three-pronged identity test must be applied strictly when a party is seeking dismissal under the doctrine of prior pending action. *Crutchfield v. Eaton Corp.*, 806 A.2d 1259, 1262, (Pa. Super.2002). Alternatively, if the identity test is not strictly met but the action involves a set of circumstances where the litigation of two suits would create a duplication of effort on the part of the parties, waste judicial resources and create the unseemly spectacle of a race to judgment, the trial court may stay the later-filed action. *Id.*⁴

Here, based upon a review of the Amended Complaint filed in this action and the complaint filed in the prior proceeding, the doctrine of prior pending action does not apply warranting the dismissal of this action. The parties are not all the same; the only overlap with respect to the parties is Plaintiff Haver. Similar to the identity of parties, the causes of action and the relief requested is not the same. In the instant Amended Complaint, there is only one cause of action alleged, violation of the enabling legislation for damages and injunctive relief. (Dkt. 11-19-25, Amended Complaint). In the prior proceeding, there are eight causes of action alleged, count I (declaratory relief stating that the enabling act is an unconstitutional delegation of power to SETPA, count II (claim for preliminary injunctive relief), count III (permanent injunctive relief), count IV (flagrant abuse of discretion under the enabling act), count V (failure to provide a

³ The action that SEPTA refers to is captioned *Haver et al. v. SEPTA*, 2408-3184 (Philadelphia County).

⁴ The question of whether this matter should be stayed in favor of the prior proceeding will be discussed in the Order and Opinion disposing of the Motion to Stay filed by SEPTA.

meaningful hearing), count VI (violation of the Equal Protection Clause of the Constitution of the Commonwealth of Pennsylvania), count VII (violation of the Equal Protection Clause of the Constitution of the Commonwealth of Pennsylvania, and VIII (violation of the Equal Rights Amendment of the Constitution of the Commonwealth of Pennsylvania. (Dkt. 2508-3184, 8-27-25, Complaint). Although there may be some overlap between this action and the prior proceeding, the record at this stage in the proceedings does not establish with sufficient clarity that the causes of action and requested relief are identical to warrant dismissal. Moreover, the procedural posture of the prior action—particularly its pendency on appeal—further complicates the analysis. Therefore, the Preliminary Objection based on prior pending action is overruled.

D. Plaintiff Haver has standing to bring this action.

SEPTA challenges Plaintiff Haver's standing to bring this action arguing there is no allegation that he ever paid a SEPTA fare after the Fare Increase was enacted; therefore, he cannot fairly and adequately assert to protect the interest of the class. This objection is overruled without prejudice. The Amended Complaint alleges that Mr. Haver is a frequent user of SEPTA and "makes purchases of SEPTA fare products on the SEPTA "Key card" and "routinely rides the 4, 27, 32 and 45 bus routes, as well as the Broad Street Line and the Market Frankford Line." (Dkt. 11-19-25, Amended Complaint, ¶¶ 18, 19). Additionally, the Amended Complaint alleges that Mr. Haver attempted to "pose relevant and material questions regarding SEPTA's proposed budget and financial practices" but SEPTA did not permit him to ask questions and was physically restrained, handcuffed and escorted out of the hearing room. (Id. ¶97). Based on the foregoing allegations, Plaintiff Haver has standing to bring this action and the Preliminary Objection is overruled.

E. The Preliminary Objection based on Sovereign Immunity is sustained in part as to monetary damages and overruled as to non-monetary relief.

SEPTA argues that Plaintiffs' claims for monetary damages must be stricken as there is no private right of action for money damages under the MTTA and that the claim for sovereign immunity has not been waived by the MTTA. The Court agrees. The Preliminary Objection is sustained in part and the claim for monetary damages is stricken. The Preliminary Objection to the claim for declaratory and equitable relief is overruled.

F. SEPTA's preliminary objection for failing to state a claim is overruled.

SEPTA argues that the Amended Complaint must be dismissed because it asks the Court to exceed its limited scope of inquiry and entertain political grievances with how a government agency sets its budget. This objection is overruled. The Amended Complaint is legally sufficient. Plaintiffs allege that implementing the fare increase is a "manifest and flagrant abuse of discretion by SEPTA" which is restriction imposed upon by the Metropolitan Transportation Authorities, 74 Pa. C. S. §1741 (15). (Dkt. 11-15-25, Amended Complaint ¶ 72.) Whether Plaintiffs can ultimately prove such claims is a matter for later stages of litigation. Accordingly, the Preliminary Objections based on failure to state a claim is overruled.

G. Paragraphs 15, 76 and 98 of the Amended Complaint is stricken as Scandalous and Impertinent Matter.

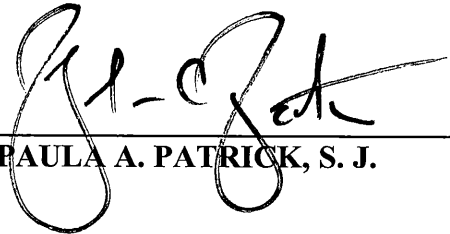
SEPTA moves to strike certain inflammatory language from the Amended Complaint at paragraphs 15, 76 and 98. Rule 1028(a)(2) permits a preliminary objection for "failure of a pleading to conform to law or rule of court or inclusion of scandalous or impertinent matter[.]" Pa.R.C.P. No. 1028(a)(2). "In order to be scandalous or impertinent, 'the allegation must be immaterial and inappropriate to the proof of the cause of action.'" *Biros v. U Lock Inc.*, 255 A.3d 489, 497 (Pa. Super. 2021), quoting *Breslin v. Mountain View Nursing Home, Inc.*, 171 A.3d 818, 822 (Pa. Super. 2017). Here, the Court agrees that certain characterizations—such as references to

“riverboat gamblers,” “games of chicken,” and “dictatorial conduct”—are immaterial, inappropriate and unnecessarily prejudicial to the proof of the cause of action alleged. Accordingly, the Preliminary Objection is sustained and paragraphs 15, 76 and 98 are stricken.

IV. CONCLUSION

The Preliminary Objections are sustained in part and overruled in part as set forth in this Court’s Order which is being issued contemporaneously with this Opinion. This case presents significant legal and factual questions that are not appropriate for full resolution at the Preliminary Objection stage. While certain claims, particularly those seeking monetary damages, are legally barred, the core claims for equitable and declaratory relief require further development.

BY THE COURT:



PAULA A. PATRICK, S. J.