

No. 26-11

IN THE
SUPREME COURT OF THE UNITED STATES

DAVID A. ROMANOSKI,
Petitioner,

v.

PENNSYLVANIA PUBLIC UTILITY COMMISSION,
et al.,
Respondents.

On Petition for a Writ of Certiorari
to the Commonwealth Court of Pennsylvania

**REPLY BRIEF OF PETITIONER
DAVID A. ROMANOSKI**

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Cases:

Webb v. Webb, 451 U.S. 493 (1981).....1, 3, 6

Zacchini v. Scripps-Howard Broadcasting Co.,
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REPLY BRIEF

Petitioner, David A. Romanoski, appearing pro se, respectfully submits this Reply Brief in response to the Brief in Opposition of Respondent Norfolk Southern Railway Company.

INTRODUCTION

Respondent first relies on *Zacchini v. Scripps-Howard Broadcasting Co.* to characterize this case as a challenge to the application of Pennsylvania law. That reliance is misplaced. Petitioner does not challenge Pennsylvania's substantive law, but instead alleges that the proceedings below denied procedural due process by resolving disputed adjudicative facts without an evidentiary hearing.

Respondent next argues that Petitioner's inadvertent omission of the Rule 14.1(g)(i) statement, together with *Webb v. Webb*, precludes review. The federal constitutional questions, however, were presented to the Supreme Court of Pennsylvania in Petitioner's Petition for Allowance of Appeal, No. 510 MAL 2025. Respondent's argument therefore conflates preservation of a federal question with compliance with Rule 14.1(g)(i).

Finally, Respondent continues to defend a judgment resting upon disputed factual premises that were never subjected to an evidentiary hearing. Respondent's own Brief in Opposition demonstrates why remand is required, as the dispositive factual premise shifted throughout the proceedings while contrary evidence was excluded and no evidentiary

process was afforded. None of Respondent's arguments provides a basis to sustain the judgment below.

ARGUMENT

I. Respondent Mischaracterizes the Constitutional Question.

Respondent's reliance on *Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U.S. 562, 566 (1977), is misplaced. *Zacchini* addressed whether the application of state law violated the First and Fourteenth Amendments in the context of a right-of-publicity claim. This case presents no comparable issue. Petitioner does not challenge Pennsylvania's substantive law governing railroad crossings or the Commission's jurisdiction under state law. Rather, Petitioner contends that the proceedings below violated procedural due process by resolving disputed adjudicative facts without an evidentiary hearing. Accordingly, *Zacchini* does not control the distinct constitutional question presented here.

II. Petitioner's Inadvertent Omission Does Not Bar Review.

Respondent correctly observes that Petitioner's Petition omitted the Rule 14.1(g)(i) statement identifying where the federal constitutional questions were presented. Petitioner acknowledges that omission and now supplies the required information.

The federal constitutional questions were presented in Petitioner's Petition for Allowance of Appeal to the Supreme Court of Pennsylvania, No. 510 MAL 2025, filed September 19, 2025. The Supreme Court denied allowance of appeal on March 17, 2026.

Those questions alleged that the Commission dismissed the complaint on an untested factual premise, excluded Petitioner's evidence without an evidentiary hearing, and thereby violated procedural due process.

The omission from the Petition for Certiorari neither altered the record, created a new federal question, nor prejudiced Respondent. It merely failed to identify where those issues had already been presented.

Respondent nevertheless argues that the federal questions were presented too late and relies on *Webb v. Webb*, 451 U.S. 493 (1981). That reliance is misplaced. *Webb* does not control this case because the issue is not whether Petitioner's federal constitutional claims were preserved in the state courts, but whether Petitioner's inadvertent omission of the Rule 14.1(g)(i) statement from the Petition for Certiorari should preclude this Court's review.

Respondent's Brief in Opposition does not answer the constitutional questions presented. When those constitutional questions were presented to the Supreme Court of Pennsylvania, Respondent filed "No Answer." Having declined to address those questions there, Respondent cannot now argue that they were presented too late.

Overlooking this technical omission serves the public interest because, as alleged in the Petition, a deteriorating retaining wall adjacent to a public highway poses safety concerns. Denying review solely because of this technical omission would elevate form over substance while leaving substantial due process and public safety questions unresolved.

III. Respondent's Brief Demonstrates Why Remand Is Required.

Respondent's Brief in Opposition demonstrates that the judgment below cannot stand because the dispositive factual basis has never remained consistent. Respondent asks this Court to sustain a judgment that the Swatara Station Crossing was abolished.

The Administrative Law Judge initially dismissed the complaint on the premise that the Swatara Station Crossing had been abolished. On appeal, however, the Commission acknowledged that "there is no dispute that a [railroad] crossing exists at Swatara Station". The Commission instead argued that its jurisdiction was limited to the railroad right-of-way, a factual premise likewise never established through an evidentiary hearing.

The Commonwealth Court likewise recognized the Swatara Station (at-grade) Crossing was converted into Swatara Station Subway (below-grade) Crossing. It ruled jurisdiction was limited to the railroad right-of-way, without evidence developed through an evidentiary hearing.

Those shifting factual positions underscore Petitioner's due process claim. The dispositive factual premise changed throughout the litigation, contrary evidence was excluded, and no evidentiary hearing was ever conducted to resolve the dispute.

A reviewing court cannot meaningfully review an administrative decision when its factual foundation changes during the course of litigation without an evidentiary process. The absence of a developed factual record is not a harmless procedural defect; it is the constitutional injury presented.

Petitioner does not ask this Court to determine responsibility for the retaining wall or to decide the Commission's jurisdiction under Pennsylvania law. Petitioner asks only that the constitutional guarantees of notice, an opportunity to be heard, and a fair evidentiary process be honored before those issues are finally decided.

Accordingly, this case should be remanded for an evidentiary hearing to resolve the disputed adjudicative facts, permit the parties to litigate a consistent jurisdictional theory, and ensure that any final judgment rests upon a properly developed record.

This case also presents significant public safety concerns. As alleged in the Petition, every governmental entity now disclaims responsibility for a deteriorating retaining wall adjacent to a public highway. Where disputed facts remain unresolved and responsibility for infrastructure affecting the traveling public has never been determined through

constitutionally adequate procedures, remand serves both the interests of due process and the public interest.

CONCLUSION

Respondent's reliance on *Zacchini v. Scripps-Howard Broadcasting Co.* provides no basis to sustain the judgment below. Petitioner does not challenge Pennsylvania's substantive law governing railroad crossings or Commission jurisdiction.

Respondent's reliance on Rule 14.1(g)(i) and *Webb v. Webb* is likewise unavailing. Petitioner's omission of the Rule 14.1(g)(i) statement was technical, not substantive, because the federal constitutional questions were already presented to the Supreme Court of Pennsylvania.

Respondent's own Brief in Opposition further demonstrates why remand is required. Its shifting factual theories confirm that the judgment rests on disputed adjudicative facts that were resolved without an evidentiary hearing.

For these reasons, the Petition should be granted, the judgment below vacated, and the case remanded for an evidentiary hearing so that the disputed adjudicative facts may be resolved through a constitutionally adequate evidentiary hearing.

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read "D.A. Romanoski".

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