

**No. 587 MD 2014
COMMONWEALTH COURT OF PENNSYLVANIA**

**WILLIAM PENN SCHOOL DISTRICT, et al.,
Petitioners,**

v.

**PENNSYLVANIA DEPARTMENT OF EDUCATION, et al.,
Respondents.**

Joint Brief of the Consortium for Public Education, Parents United for Public Education, Philadelphians Organized to Witness, Empower and Rebuild (POWER), Youth United for Change, the Philadelphia Student Union, the PA Immigration and Citizenship Coalition (PICC), and Parent Education and Advocacy Leadership Center (PEAL) as AMICI CURIAE in Support of PETITIONERS WILLIAM PENN SCHOOL DISTRICT, et al.

Fred T. Magaziner (PA 23332)
Lynne Kolodinsky (PA 318897)
DECHERT LLP
2929 Arch Street
Cira Centre
Philadelphia, PA 19104-2808
(215) 994-4000
(215) 994-2222 (Fax)
fred.magaziner@dechert.com
lynne.kolodinsky@dechert.com

Counsel for *Amici Curiae*

TABLE OF CONTENTS

INTRODUCTION 1

STATEMENT OF INTEREST OF *AMICI CURIAE* 1

SUMMARY OF ARGUMENT 3

ARGUMENT 4

I. Education Will Define the Future of Our Children 4

II. Conditions in Underfunded Schools 5

III. The Underfunding of Impoverished School Districts Is Extreme 14

IV. The Need Is Now 15

V. How This Court’s Ruling Will Impact *Amici* 16

CONCLUSION 16

TABLE OF AUTHORITIES

CASES

Brown v. Board of Education, 347 U.S. 483, 493 (1954).....4

*Wilkinsburg Educ. Ass’n. v. Sch. Dist. of Wilkinsburg & Bd. of Sch. Dirs. of the
Sch. Dist. of Wilkinsburg*, 542 Pa. 335, 323 (Pa. 1995)5

CONSTITUTIONAL PROVISIONS

Pa. Const. art. III, § 141, 3

INTRODUCTION

Each of the *six amici curiae* organizations represents or is comprised of public school parents or students whose very futures depend on the outcome of this case. Unless this Court enforces the constitutional mandate to “provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth,” see Pa. Const. art. III, § 14, these young people will have little chance to become productive members of American society.

Amici submit this brief to urge the Court to overrule the respondents’ preliminary objections to the Petition for Review. The hundreds of thousands of young people in underfunded schools across the state are looking to this Court to enforce the constitutional promise of “a thorough and efficient system of public education.”

STATEMENT OF INTEREST OF *AMICI CURIAE*

➤ **The Consortium for Public Education** represents public school students and parents in more than 40 districts across seven western Pennsylvania counties, many in very poor communities, such as Clairton City, Monessen City and Wilkinsburg. Without adequate funding for public schools, the children in these economically distressed communities will grow up ill-equipped for careers, citizenship and lifelong learning.

➤ **Parents United for Public Education (Parents United)** is a parent-led organization working to ensure a baseline level of resources, services and staffing in the public schools.

➤ **Philadelphians Organized to Witness, Empower and Rebuild (POWER)**, an interracial grassroots organization comprising forty dues-paying congregations that represent 30,000 Philadelphians, works to alleviate poverty. Because inadequate education causes endemic poverty, POWER is focused on improving the education offered by the public schools of Philadelphia.

➤ **Youth United for Change (YUC)** is composed of African American and Latino students who live in impoverished neighborhoods of North Philadelphia and attend schools that desperately need more staff and more resources, as well as significant repairs to their physical plants. YUC's members are substantially disadvantaged because of the inadequate funding of the Philadelphia public schools.

➤ The **Philadelphia Student Union (PSU)** is comprised of low-income students of color attending Philadelphia's most impoverished schools. PSU's members have first-hand experience with the obstacles and challenges students face on a daily basis as a result of inadequate school funding.

➤ **PA Immigration and Citizenship Coalition (PICC)** represents the interests of refugee and immigrant children.¹ If these children are deprived of an adequate education, their entire lives may well be spent on the margins of American society.

➤ **Parent Education and Advocacy Leadership Center (PEAL)** is a statewide organization of parents of children with special health care needs and disabilities that helps parents become effective advocates for their children in school so that they receive a free, appropriate public education.

SUMMARY OF ARGUMENT

Recognizing the importance of education to the Commonwealth's future success, the Pennsylvania Constitution mandates "the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth." Pa. Const. art. III, § 14.

In violation of this constitutional mandate, the General Assembly has perpetuated a funding scheme that deprives school districts all across the state of the resources they need in order to help their students reach minimum achievement standards. Severe underfunding causes thousands of Pennsylvania students to

¹ PICC is Pennsylvania's only statewide immigrants' rights coalition. Its members include grassroots community groups, faith communities, labor unions, advocacy organizations, service providers, immigrants and concerned individuals.

suffer daily in schools that lack sufficient teachers, support staff, textbooks, instructional materials, and important curricular and extra-curricular programming. Far from being safe havens of learning, many of the school buildings in the Commonwealth are dilapidated and dangerous.

The need for adequate school funding is now. The Pennsylvanian children whose interests are represented by these *amici* have nowhere else to turn but the Court.

ARGUMENT²

I. Education Will Define the Future of Our Children

Amici well understand that education substantially determines whether children succeed in their later lives. As the United States Supreme Court stated 60 years ago, “it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.” *Brown v. Board of Education*, 347 U.S. 483, 493 (1954). Hence, “education is perhaps the most important function of state and local governments.” *Id.* Because of its importance, “public education is a fundamental right” established by Article III, Section 14 of the

² The Court may take judicial notice of adjudicative facts, which include facts about the events, persons and places relevant to the matter before the Court. *See* Pa.R.E. 201.

Pennsylvania Constitution. *Wilkinsburg Educ. Ass'n. v. Sch. Dist. of Wilkinsburg & Bd. of Sch. Dirs. of the Sch. Dist. of Wilkinsburg*, 542 Pa. 335, 323 (Pa. 1995).

Adequately educating the children of Pennsylvania may be costly, but not as costly as condemning hundreds of thousands of young people to economically unproductive lives. “If you think education is expensive, try ignorance.”³ Children who receive an inadequate education become adults who strain our network of social services and challenge our justice system. As Mark Twain observed, “Every time you stop a school, you will have to build a jail.”⁴

II. Conditions in Underfunded Schools

The General Assembly has established minimal standards for public schools, including curriculum requirements and mandated services,⁵ but it has failed to

³ Attributed to Derek Bok (former president of Harvard University), among others. *See, e.g.*, Michael A. Gerber, President of the Atlanta Regional Council for Higher Education (ARCHE), Remarks at the ARCHE Board Chair’s Dinner, Zoo Atlanta (May 18, 2010), available at <http://www.atlantahighered.org/Newsroom/FeatureStoryDetail/tabid/604/xmid/1616/Default.asp> (attributing quote to Derek Bok).

⁴ Mark Twain, Address at a Meeting of the Berkeley Lyceum, New York (Nov. 23, 1900), available at <http://www.gutenberg.org/files/3188/3188-h/3188-h.htm>.

⁵ Under regulations authorized by the General Assembly and promulgated by the State Board of Education, every school district ***must*** provide: Planned instruction at every grade level in “[t]he arts, including active learning experiences in art, music, dance and theatre;” 22 Pa. Code § 4.21(e) (requiring that the arts “be provided to every student every year in the primary program”); 22 Pa. Code § 4.21(f) (requiring that the arts “be provided to every student every year in the intermediate level program”); 22 Pa. Code § 4.22(c) (requiring that the arts “be provided to every student in the middle level program”); 22 Pa. Code § 4.23(c) (requiring that the arts “be provided to every student in the high school program”); a “comprehensive and integrated K-12 program of . . . student services,” including “[d]evelopmental services for students that address

provide the funds that schools need to meet those standards. The General Assembly has also adopted achievement standards that determine whether or not a student can receive a high school diploma, but it has perpetuated a funding scheme that deprives many schools of the resources they need to lift their students to those standards.

This severe underfunding afflicts impoverished school districts schools all across the state⁶—from Mount Carmel Area School District (Northumberland County) to Juniata County School District (Juniata County), from Beaver Area

their developmental needs,” such as guidance counseling; 22 Pa. Code § 12.41(a)–(b). In addition, these student services must be “an integral part of the instructional program at all levels of the school system.” 22 Pa. Code § 12.41(c)(1); planned instruction in “[v]ocational-technical education, . . . “[b]usiness education, including courses to assist students in developing business and information technology skills,” . . . “[w]orld languages, . . . [and] “[t]echnology education” to every student in high school; 22 Pa. Code § 4.23(d); programs for English-language learners “for the purpose of facilitating the student’s achievement of English proficiency and the academic standards”; 22 Pa. Code § 4.26; “[h]ealth, safety and physical education” at every grade level; 22 Pa. Code §§ 4.21(e)(6), (f)(8); 4.22(c)(7); 4.23(c)(8); 4.27; “aids, services and accommodations that are designed to meet the educational needs of protected handicapped students as adequately as the needs of non-handicapped students are met;” 22 Pa. Code § 15.1; special education for “children with disabilities” that “enables them to be involved in and progress in the general curriculum”; 22 Pa. Code § 4.28(a) and special education for “[s]tudents who are gifted” that “that enables them to participate in acceleration or enrichment, or both, as appropriate.” 22 Pa. Code § 4.28(b); 22 Pa. Code § 16.2 (“This chapter specifies how the Commonwealth will meet its obligations to suspected and identified gifted students who require gifted education to reach their potential.”).

⁶ See Brian Wallace, *Three of four school districts in state say they’ll cut programs to help balance budgets*, LANCASTERONLINE (Jun. 7, 2013), http://lancasteronline.com/news/three-of-four-school-districts-in-state-say-they-ll/article_40eefe64-6e59-5747-8423-32cec6424197.html. School districts across the state have had to eliminate and/or reduce academic programs, furlough teachers, lay off other staff and increase class size.

School District (Beaver County) to the Moshannon Valley School District (Clearfield County). Every day, hundreds of thousands of Pennsylvania students suffer in underfunded, substandard schools:

- **Too few teachers:** In 2013-14, 75% of school districts statewide were forced to reduce instructional programming, 47% had to increase class size, 22% were compelled to reduce or eliminate programs that provide extra help or tutoring for struggling students, and 13% had to eliminate summer school programs that allowed students to make up academic credit that allowed students to move to the next grade level or to graduate on time. The School District of Philadelphia, the largest district in the state, eliminated 7,588 positions for the 2014-2015 school year (nearly one-third of its 2010-11 workforce of 23,762),⁷ leaving 131,000 students in 214 schools served, for example, by a mere three full-time equivalent librarians and zero (0) gifted education teachers.⁸ The School District of Lancaster has similarly been forced

⁷ See Press Release, Pennsylvania Association of School Business Officials, PASBO/PASA Release Budget Survey Results (June 5, 2013), *available at* <http://pennbpc.org/sites/pennbpc.org/files/PASBO-PASA-Survey-Schools-2013.pdf>. The staff reductions included 180 principals or assistant principals (40% reduction), 3,519 total teachers (33% reduction), 417 Special Education teachers (22% reduction), 185 Career and Technical Education teachers (37% reduction), 48 teachers of English-language learners (14.7% reduction), 412 counsellors, student advisors, or social service liaisons (54% reduction), 424 noontime aides (25% reduction), 318 secretaries (51% reduction), 726 supportive service assistants (60% reduction), 79 school police officers (23% reduction) and 104 school nurses (35% reduction).

⁸ Smaller classes allow teachers to individualize instruction and effectively address student learning problems. See Blatchford, P., Bassett, P. & P. Brown, "Do Low Attaining and Younger Students Benefit Most from Small Classes? Results from a systematic observation study of class size effects on pupil engagement and teacher pupil interaction," (2008) (paper presented at the American Educational Research Association Annual Meeting, New York, NY). Smaller class sizes thus have a significant impact on student achievement, including higher test scores. The impact is particularly clear among African American students and students living in poverty. One study found that reducing classes from 22 to 15 students in the early elementary years could reduce the black/white test score gap by 38 percent. See Krueger, A. & Whitmore, D., "Would smaller classes help close the black/white achievement gap?" in J. Chubb and T. Loveless (eds.), *Bridging the Achievement Gap*, Washington, DC: Brookings Institute Press (2002).

to eliminate over 100 teaching positions and more than 20 staff positions.⁹

- **Alarming levels of overcrowding:** In some schools, classrooms are so crowded that teachers cannot even walk between desks to interact with individual students.¹⁰ This problem is so severe that it is forcing at least one school district to consider making classrooms out of school libraries.¹¹
- **Lack of basic books for classes:** In some schools, pupils have to share basic textbooks or do not have access to updated textbooks at all.¹² An article recently published in the New York Times reported as follows: “Money is so short at Feltonville School of Arts and Sciences, a public middle school here, that a nurse works only three afternoons a week, leaving the principal to oversee the daily medication of 10 children, including a diabetic who needs insulin shots. On the third floor filled with 200 seventh and eighth graders,

More recently, in the January 2012 report, “Revisiting the Age Old Question: Does Money Matter in Education?” Bruce Baker reviewed the wide body of research in the “Does Money Matter” debate and confirmed a clear relationship between school spending and student achievement outcomes. See Baker, B.D., *Revisiting the Age Old Question: Does Money Matter in Education?*, page iv, Shanker Institute (2012), available at <http://www.shankerinstitute.org/resource/does-money-matter-education> (“[T]he things that cost money benefit students, and there is scarce evidence that there are more cost-effective alternatives.”).

⁹ See Petition, *William Penn Sch. Dist., et al. v. Pennsylvania Dept. of Educ., et al.*, No. 587 MD 2014, at ¶¶ 181–84 (Pa. Commonw. Nov. 10, 2014) (hereinafter “Pet.”).

¹⁰ See Petition, *Allen v. Dumaresq*, No. 474 MD 2014, at 7 (Pa. Commonw. Sept. 9, 2014), available at <http://www.pilcop.org/wp-content/uploads/2014/08/14.09.09-Allen-Petition-for-Review-without-exhibits.pdf>.

¹¹ Russ O’Reilly, *AASD leader addresses overcrowded schools*, THE ALTOONA MIRROR (Jan. 7, 2015), <http://altoonamirror.com/page/content.detail/id/601947/AASD-leader-addresses-overcrowded-schools.html?nav=742> (detailing problems resulting from overcrowding in the Altoona Area School District).

¹² See, e.g., Pet. ¶¶ 241–43 (detailing William Penn School District’s lack of funding to purchase up-to-date textbooks that meet the requirements of the Pennsylvania Common Core).

one of two restrooms remains locked because there are not enough hall monitors. And in a sixth-grade math class of 33 students with only 11 textbooks to go around, the teacher rations paper used to print out homework equations.”¹³

- **Lack of other essential instructional materials:** Many students do not have adequate access to instructional equipment, including computers, software, and internet access; audio-visual equipment and resources; and instructional materials, such as workbooks and library books.¹⁴
- **Minimal extra-curricular and after-school activities:** Forty percent of districts responding to the 2014 PASA-PASBO survey eliminated or reduced a total of 261 extra-curricular programs between 2010 and 2011 and 2013 and 2014. Approaching 2014-15, 28 percent of the districts that participated in the survey were poised to cut or curtail 172 programs. In high poverty districts, 68 percent of students are affected by these eliminations and reductions. Meanwhile, 20 percent of responding districts have implemented fees for participation in 134 extra-curricular programs.¹⁵
- **Few advanced-level math and science programs and foreign language courses:** Thirty-seven percent of school districts plan to eliminate or have already reduced courses in subjects such as advanced-level math and science programs and foreign language courses. Greater Johnstown School District, for example, has been forced to cut myriad programs, including art, foreign languages,

¹³ Motoko Rich, *Philadelphia Teachers Hit by Latest Cuts*, N.Y. TIMES (Oct. 14, 2014), <http://www.nytimes.com/2014/10/15/us/philadelphia-teachers-hit-by-latest-cuts.html>.

¹⁴ See Report, Campaign for America’s Future & National Education Association, *Starving America’s Public Schools: How Budget Cuts and Policy Mandates are Hurting our Nation’s Students at 35*, available at <http://ourfuture.org/files/documents/starving-schools-report.pdf>.

¹⁵ See Budget Report, Pennsylvania Association of School Administrators & Pennsylvania Association of School Business Officials, *Continued Cuts: The Fourth Annual PASA-PASBO Report on School District Budgets at 5–6* (June 2014), available at <http://www.pasa-net.org/budgetreport6-5-14.pdf> (hereinafter “PASA-PASBO Report”).

vocational training, science labs, special education, after-school programs, translation and interpretation services for English Language Learners, and remediation and intervention services.¹⁶ In high poverty school districts, these types of cuts affect 90 percent of students.¹⁷

- **Few music, art and physical education courses:** In one school district in Butler County, elementary schools that previously held art, music, and physical education classes twice every six days were forced to reduce those offerings to once every five days.¹⁸ Not only does this reduction harm students, but it also harms academic teachers who have less time for planning and professional development during the school day because their students are not sent away for electives.¹⁹
- **Little instruction in English as a Second Language:** Tens of thousands of refugee and immigrant children face especially difficult challenges in obtaining an adequate education. To make matters worse, these children are overwhelmingly concentrated in the districts that are most under-funded, such as Philadelphia, Reading, Chester Upland and Allentown. Without adequate English as Second Language (ESL) programs, these children cannot possibly master substantive subjects, such as math or science. Language problems can also impact the ability of immigrant and refugee parents to support their children's education; it is the children who suffer the

¹⁶ See Pet. ¶¶ 213–19 (listing Greater Johnstown School District's programming cuts).

¹⁷ See Mary Niederberger, *Report shows sharp cuts in Pennsylvania school programs due to funding shortfalls*, PITTSBURGH POST-GAZETTE (Jun. 5, 2013), <http://www.post-gazette.com/news/education/2013/06/05/Report-shows-sharp-cuts-in-Pennsylvania-school-programs-due-to-funding-shortfalls/stories/201306050159>.

¹⁸ See Mary Niederberger, *School districts must make do after funding cuts of \$1 billion*, PITTSBURGH POST-GAZETTE (Aug. 28, 2011), <http://www.post-gazette.com/news/education/2011/08/28/School-districts-must-make-do-after-funding-cuts-of-1-billion/stories/201108280279>.

¹⁹ See Sara Neufeld, *Are Pennsylvania students being set up for failure? New education standards, graduation exams highlight school resource needs*, THE HECHINGER REPORT (Oct. 15, 2013), <http://hechingerreport.org/are-pennsylvania-students-being-set-up-for-failure-new-education-standards-graduation-exams-highlight-school-resource-needs>.

consequences, for example, when schools cannot provide interpreters at parent-teacher meetings.²⁰

- **No access to guidance counselors:** The absence of guidance counselors can be devastating for children dealing with emotional trauma, *e.g.*, the death of a parent or fellow student, and can make it impossible for these children to perform well in school.²¹
- **No access to college and career counselors:** At one high school, a single counselor was assigned to 800 students and asked to assist 182 seniors with college applications.²² Students with college potential often need the guidance of counselors to actually get to college, but the schools do not have enough counselors. One senior at Bodine High School reported that “[t]he counselor comes for a half-day and then one day after school. That doesn’t help us much With seniors especially—we have no help with college things at all Give us the tools we need in order to go to college.”²³ Similarly, a senior at Academy at Palumbo High School complained “[w]e have one [guidance counselor] for two hundred seniors — which is crazy. We used to have three, then budget cuts came.”²⁴

²⁰ See Eleanor Chute, *Pennsylvania student scores declined with reduced funding, test results show*, PITTSBURGH POST-GAZETTE (Nov. 21, 2014), <http://www.post-gazette.com/news/education/2014/11/21/State-student-scores-declined-with-reduced-funding-test-results-show/stories/201411240030>.

²¹ See Petition, *Allen v. Dumaresq*, No. 474 MD 2014 at 4, 9 (Pa. Commonw. Sept. 9, 2014), available at <http://www.pilcop.org/wp-content/uploads/2014/08/14.09.09-Allen-Petition-for-Review-without-exhibits.pdf>.

²² See Sharon Ward, Director of the Pennsylvania Budget and Policy Center, Report: A Strong State Commitment to Public Education, A Must Have for Pennsylvania’s Children (Apr. 2014), available at <http://pennbpc.org/sites/pennbpc.org/files/20140429schoolreport.pdf>.

²³ Interview with Emyluz, 17, a senior at Bodine High School (Philadelphia County), “No Counselor” (Nov. 12, 2013), available at <http://www.hear-me.net/stories/7244>.

²⁴ Interview with Chris, 17, a senior at Palumbo High School (Philadelphia County), “We lost guidance counselors to budget cuts” (Dec. 3, 2014), available at <http://www.hear-me.net/stories/8333>.

- **No school nurses:** The vast majority of school nurses surveyed in one school district (more than 70 percent) reported a marked reduction in school nursing staff or staff time in schools, as nurses are required to “cover” two, three, or more school buildings. They reported that children with chronic health conditions requiring daily maintenance are the most significantly impacted group, followed by children whose families do not have health insurance, children with multiple disabilities, children whose parents are unable to go to school to administer medications, and children whose families lack financial resources. Medications and/or treatments were being administered by teachers or aides. Fifty-two percent reported that children are *not* receiving urgent medical care. Thirty-six percent stated that children do not receive their treatments at prescribed intervals. Thirty percent noted that children do not receive evaluations for a disability in a timely manner.²⁵ One respondent noted, “Last month my school principal called 911 three times. The three incidents could have been handled by the school nurse.”²⁶
- **Harsh disciplinary policies that do more to push students out of school than maintain order in the building:** As with nursing staff cuts, reductions in the number of school guidance counselors leave

²⁵ Report, Education Law Center, *The School Nurse Shortage in Philadelphia* at 4 (May, 2013), available at http://www.elc-pa.org/wp-content/uploads/2014/01/ELC_SchoolNurseReport_May2013.pdf.

²⁶ *Id.* The nursing staff cuts have had deadly consequences. In one case, a Philadelphia sixth-grader died from an asthma attack after funding cuts to the nation’s eighth largest school district left most children in that district bereft of full-time school nurses who know what to do during an attack of a life-threatening disease. Teachers at the school were not trained to discern the severity of her condition, and there was no school nurse to intervene. Tragically, the student was sent home and died on the way to the emergency room later that day. See Jeff Bryant, “*School nurse cuts killed my daughter*”: *Laporshia Massey died because our priorities are wrong*, SALON (Oct. 18, 2013), http://www.salon.com/2013/10/18/school_nurse_cuts_killed_my_daughter_laporshia_massey_died_because_our_priorities_are_wrong/; see also Denisa Superville & Evie Blad, *Philadelphia Tragedy Highlights Role of School Nurses*, EDUCATION WEEK (Jun. 2, 2014), http://www.edweek.org/ew/articles/2014/06/04/33philly_ep.h33.html (reporting the death of a Philadelphia elementary student who felt ill at a school that did not have a full-time nurse on duty).

students without a valuable resource. Schools throughout Pennsylvania have adopted the practice of referring students involved in even minor behavioral matters or confrontations to the police for action in the courts.²⁷

- **Dangerous school buildings:** At an average age of 63 years old, the Philadelphia school buildings are beset with issues familiar to any owner of an old house, including mold, lead paint, and asbestos. As a result, a study last year in the *Journal of Asthma* found that Philadelphia children suffered from asthma at three times the national average. Mold and dampness problems are so severe in Philadelphia that the National Institute for Occupational Safety and Health joined with the district and union two years ago to develop a computerized tool for assessing these problems.²⁸ Outside of Philadelphia, other schools face similar issues in dilapidated buildings. In Reading, for example, on one of the coldest days of winter, a class of kindergartners sat shivering in their 40-degree elementary school classroom wearing their coats and hats. The school had only one operating boiler, and there was no money to fix the other. Whole sections of the school were thus literally left out in the cold.²⁹

²⁷ See Report, Youth United for Change & Advancement Project in consultation with the Education Law Center, *Zero Tolerance in Philadelphia: Denying Educational Opportunities and Creating a Pathway to Prison* at 7–8 (Jan. 2011), available at <http://www.atlanticphilanthropies.org/sites/default/files/uploads/Zero%20Tolerance%20in%20Philadelphia%20%282%29.pdf>; Report, American Civil Liberties Union of Pennsylvania, *Beyond Zero Tolerance: Discipline and Policing in Pennsylvania Public Schools* at 7–8 (Nov. 2013), available at http://www.aclupa.org/files/7713/8435/5077/BZT_Report_11-14-13.pdf.

²⁸ See Dylan Purcell & Kristen A. Graham, *State of Phila. 's school buildings is a worry, too*, *The Philadelphia Inquirer* (Nov. 11, 2013), http://articles.philly.com/2013-11-11/news/43889665_1_health-hazards-philadelphia-school-district-school-buildings; see also Daniel Denvir, *Philly School District blocks a federal study after health risks are exposed*, *Philadelphia CityPaper* (May 8, 2014), <http://citypaper.net/News/Philly-School-District-blocks-a-federal-study-after-health-risks-are-exposed/> (reporting that the School District of Philadelphia has refused to make public the complete findings of a study revealing pervasive dampness, mold, and water damage in Philadelphia school buildings).

²⁹ Cindy Long, *Aging Schools Create Dangerous and Fragile Learning Environments*, *NEAToday* (Mar. 13, 2013), <http://neatoday.org/2013/03/13/aging-schools-create-dangerous->

III. The Underfunding of Impoverished School Districts Is Extreme

How underfunded are Pennsylvania's poorest school districts? The Pennsylvania legislature itself commissioned a study on school funding that found that Pennsylvania's schools in 2005-06 were spending *\$4.5 billion less than what was needed to meet Pennsylvania's minimal academic standards.*³⁰ That extraordinary deficiency has no doubt only gotten worse in the last few years.

One can get some sense of how far removed we are from "a thorough and efficient system of public education" by comparing what affluent districts spend on educating their own children with what the poorest districts are able to spend. Compare Lower Merion School District, for example, which spends \$28,400 per pupil per year³¹ with Mount Carmel Area School District (Northumberland

and-fragile-learning-environments-2/; see also Christine Vendel, *Harrisburg school buildings study finds polluted air being pumped into 1 school*, The Patriot-News (Feb. 2, 2015), http://www.pennlive.com/midstate/index.ssf/2015/02/harrisburg_schools_air_quality.html (detailing serious HVAC problems in Harrisburg school buildings).

³⁰ Report, Augenblick, Palaich & Assoc., Inc. (Denver, CO), *Costing Out the Resources Needed to Meet Pennsylvania's Public Education Goals at 51* (Dec. 2007) (presented to the Pennsylvania State Board of Education).

³¹ Other wealthy school districts, e.g., Council Rock (Bucks County) and Wallingford-Swathmore School District (Delaware County), spend comparable amounts. See "School Spending," OpenPAGov.Org (2013), http://www.openpagov.org/education_revenue_and_expenses.asp.

County), for example, which can afford a mere \$9,983 per pupil.³² That’s a difference of \$241,800 over the course of a student’s K -12 school career. Every year, Lower Merion spends \$710,000 on the typical classroom of 25 students whereas Mount Carmel Area School District can spend only \$245,000 on a 25-student classroom in its schools—a difference of \$465,000 per year.

Amici are not suggesting that a “thorough and efficient system of public education” requires every school district to be equally well funded, and *amici* certainly do not contend that every school district in Pennsylvania must provide the kind of superior education that Lower Merion can afford to offer. But it cannot be said that a system that results in such huge disparities is the “thorough and efficient system” mandated by the Constitution.

IV. The Need Is Now

The need for adequate school funding is now. Tens of thousands of students in Pennsylvania are being harmed each and every day. These students have only one childhood. They have only one opportunity to receive a meaningful education. Tomorrow is too late. Five years from now is irrelevant. Every day that goes by

³² See *id.* “Per student” is based upon Average Daily Membership (“ADM”) as reported by the Pennsylvania Department of Education. ADM refers to “all resident pupils of the school district for whom the school district is financially responsible.” It includes students in charter schools. See “Financial Data Elements,” Pennsylvania Department of Education (2015), http://www.portal.state.pa.us/portal/server.pt/community/financial_data_elements/7672.

without this Court enforcing the constitutional mandate tragically deprives hundreds of thousands of Pennsylvanian children of a fair chance to have productive lives.

V. How This Court's Ruling Will Impact *Amici*

The students in underfunded public schools have nowhere to turn but this Court. In a perfect world, the General Assembly would have embraced a school funding scheme that fulfills the Constitutional mandate and there would be no need for Court intervention. But the General Assembly has not done so, so it is this Court that must enforce the Constitution.

If this Court sustains respondents' preliminary objections to the Petition for Review, it will mean that the Education Clause is nothing but a bunch of empty words. And it will be tragic for our children.

CONCLUSION

The Pennsylvania Constitution promises our children a "thorough and efficient system of public education," but the General Assembly has starved our schools of the funds that they need to fulfill that promise. The *amici curiae* urge the Court to overrule the respondents' preliminary objections and grant the petitioners' request for declaratory and injunctive relief.

Dated: February 17, 2015

Respectfully submitted,

/s/ Fred T. Magaziner

Fred T. Magaziner (PA 23332)
Lynne Kolodinsky (PA 318897)
DECHERT LLP
2929 Arch Street
Cira Centre
Philadelphia, PA 19104-2808
(215) 994-4000
(215) 994-2222 (Fax)
fred.magaziner@dechert.com
lynne.kolodinsky@dechert.com

Counsel for *Amici Curiae*

CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2015, I electronically filed the foregoing with the Clerk of Court for the Commonwealth Court of Pennsylvania by using the PACFile appellate court electronic filing system.

I further certify that the foregoing was served via First Class Mail upon the following persons:

Jennifer R. Clarke (Bar No. 49836)
Michael Churchill (Bar No. 04661)
PUBLIC INTEREST LAW CENTER
OF PHILADELPHIA
1709 Benjamin Franklin Parkway
Philadelphia, PA 19103
Telephone: 215-627-7100

Maura McInerney (Bar No. 71468)
Rhonda Brownstein (Bar No. 46866)
David Lapp (Bar No. 209614)
Cheryl Kleiman (Bar No. 318043).
EDUCATION LAW CENTER
1315 Walnut St., Suite 400
Philadelphia, PA 19107
Telephone: (215) 238-6970

Aparna Joshi (*pro hac vice* forthcoming)
Matthew J. Sheehan (Bar No. 208600)
O'MELVENY & MYERS LLP
1625 Eye Street, NW
Washington, D.C. 20006
Telephone: (202) 383-5300

Brad M. Elias (*pro hac vice*
forthcoming)
O'MELVENY & MYERS LLP
Times Square Tower
7 Times Square
New York, NY 10036
Telephone: (212) 326-2000

Attorneys for Petitioners

Rep. Samuel H. Smith
139 Main Capitol Building
PO Box 202066
Harrisburg, PA 17120

Sen. Joseph B. Scarnati III
Senate Box 203025
292 Main Capitol
Harrisburg, PA 17120

Pennsylvania State Board of
Education
333 Market Street
Harrisburg, PA 17126

Gov. Thomas W. Corbett
225 Main Capitol Building
Harrisburg, PA 17120

Pennsylvania Department of
Education
333 Market Street
Harrisburg, PA 17126

Carolyn Dumaresq
Secretary of Education
333 Market Street
Harrisburg, PA 17120

Attorneys for Respondents

As required by Pa. R.A.P. 2187(a)(2) and the Court's Order dated October 24, 2012 (as amended on January 6, 2014), fifteen (15) copies of this Brief will submitted in paper version to the Court's filing office within seven (7) days of February 17, 2015.

/s/ Lynne Kolodinsky _____