Received 6/1/2022 7:32:12 PM Commonwealth Court of Pennsylvania

Filed 6/1/2022 7:32:00 PM Commonwealth Court of Pennsylvania
587 MD 2014

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

WILLIAM PENN SCHOOL DISTRICT, *et al*., Petitioners, v. PENNSYLVANIA DEPARTMENT OF EDUCATION, *et al*., Respondents.	No. 587 MD 2014

PETITIONERS' POST-TRIAL BRIEF

TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF AUTHORITIES

Page

Cases

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

Statutes

Regulations

TABLE OF AUTHORITIES
(continued)

Page

Constitutional Provisions

Other Authorities

I. STATEMENT OF JURISDICTION

This Court has original jurisdiction over this action pursuant to 42 Pa.C.S. § 761(a). This Court may grant declaratory relief pursuant to 42 Pa.C.S. § 7532, *et seq.*, and may grant injunctive relief pursuant to 42 Pa.C.S. § 7531, *et seq*.

II. STANDARD OF REVIEW

"In a bench trial, the trial court is acting in two distinct capacities: first, as the gate keeper, ruling on the admissibility of evidence; and second, as the fact-finder, affording weight to the admissible evidence." *Commonwealth v. Safka*, 141 A.3d 1239, 1249 (Pa. 2016). After "review of the evidentiary record, . . . and considering the parties' written submissions," it is appropriate for the Court to make findings of fact, conclusions of law, and reach the ultimate issues of a case. *Applewhite v. Commonwealth*, 2014 WL 184988, at *1 (Pa. Commw. Ct. Jan. 17, 2014).

III. STATEMENT OF QUESTIONS INVOLVED

1) Have the General Assembly and other Respondents failed to fulfill the Pennsylvania Constitution's mandate to establish, maintain, and support a high-quality, contemporary system of public education for all children in the Commonwealth under Article III, Section 14?
2) Have the General Assembly and other Respondents violated the Pennsylvania Constitution's equal protection provisions by unlawfully discriminating against Petitioners and children in low-wealth

communities, and infringing upon their fundamental right to obtain a constitutionally adequate education under Article III, Section 32?

IV. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

In November 2014, six school districts, several families, the Pennsylvania Association of Rural and Small Schools, and the Pennsylvania Conference of the National Association for the Advancement of Colored People commenced this action, alleging that the Commonwealth's school funding scheme violates Article III, § 14, and Article III, § 32 of the Pennsylvania Constitution.

On April 21, 2015, pursuant to preliminary objections filed by Respondents, Commonwealth Court held that Petitioners' claims were non-justiciable under binding precedent. *See William Penn Sch. Dist. v. Pa. Dep't of Educ.*, 114 A.3d 456, 464 (Pa. Commw. Ct. 2015). Petitioners appealed, and on September 28, 2017, the Supreme Court overruled that precedent, holding "that constitutional promises must be kept," and that it "is fair neither to the people of the Commonwealth nor to the General Assembly itself to expect that body to police its own fulfillment of its constitutional mandate." *William Penn Sch. Dist. v. Pa. Dep't of Educ.*, 170 A.3d 414, 418, 464 (Pa. 2017).

Over the course of approximately fourteen weeks from November 2021 to February 2022, this Court held a bench trial. On May 2, 2022, Petitioners and

Respondents filed extensive proposed findings of fact and conclusions of law, and this matter now awaits disposition.

B. FACTUAL OVERVIEW

For purposes of brevity, Petitioners incorporate their previously filed Proposed Findings of Fact.

V. SUMMARY OF ARGUMENT

When the Supreme Court overturned four decades of precedent and remanded this matter for trial, it held that courts across the country had developed "broad, flexible judicial standard[s] for assessing legislative fulfillment of [educational] constitutional mandate[s]." *William Penn Sch. Dist.*, 170 A.3d. at 450-51. Accordingly, the Supreme Court called upon this Court to "give meaning and force" to the Constitution's Education Clause, and "to develop a record enabling assessment of the adequacy of the current funding scheme" consistent with the Constitution's meaning. *Id.* at 457.

That record is clear: Rooted in a centuries-old commitment to education, in a clause enacted in a time of profound distrust of the legislative body tasked with completing it, the Constitution demands the provision of a high-quality, contemporary education for every child in the Commonwealth. In today's terms, that means the General Assembly must provide *all* children the resources necessary

to graduate as capable, engaged citizens, ready to succeed in college and in family-sustaining careers.

To examine whether the General Assembly has met its duty under the Education Clause, this Court, like other state courts before it, should determine whether the school funding system provides the quality of education that the Constitution requires. To make *that* determination, this Court should consider the inputs and outputs that other state courts have found probative in evaluating their school finance systems: the amount of funding provided, the scope of educational resources available, and the resulting educational outcomes.

The Pennsylvania Constitution confers a fundamental right to a high-quality, contemporary education. Accordingly, a system that discriminates against low-wealth districts, depriving students in those districts of an equal opportunity to obtain a constitutionally adequate education, is also a violation of the equal protection principles in Article III, Section 32. To determine whether the funding system impairs the fundamental rights of students in low-wealth districts, the Court should apply strict scrutiny, evaluating whether the disparities created by the current system are necessary to advance a compelling state interest.

The facts that inform this analysis are largely admitted: all children can learn; resources in schools matter; some children need more of those resources to succeed; and educational achievement leads to profoundly improved life outcomes.

In the face of this consensus stands Pennsylvania's stark reality: Some children live in districts with funding sufficient to provide an education that enables them to succeed, while many others are deprived of the most basic resources. Children learn in closets and hallways. Seventy-five small children share a single toilet. Libraries are closed. Teachers teach two or even three classes at the same time, and are laid off when budget gaps loom. And when school leaders attempt to help children close learning gaps, their inadequate resources force them to choose which children will receive vital assistance, and which will not. In other words, rather than providing children what everyone agrees they need, school districts do something else entirely: triage them.

The results of this are clear. Almost as many students fail to reach proficiency as those who meet it. Students who graduate from public high schools regularly fail to enroll or graduate from a two or four-year college. And Pennsylvania has opportunity and achievement gaps — by zip code, race, and family income — as large as any state in the nation. It is not supposed to work this way.

This case will "determine the future of public education in Pennsylvania, and consequently, the strength of our economy, government, and community for generations to come." May 16, 2022 Brief of Attorney General Josh Shapiro as Amicus Curiae in Support of Petitioners ("Att'y Gen. Amicus Br.") 3. But the

relief Petitioners seek could not be more basic. The General Assembly must provide children the safe, modern buildings, books and technology, and sufficient professional staff that every party agrees will enable students to succeed. And the General Assembly must ensure that the education funding system does not discriminate against children from low-wealth districts.

In response to these conservative demands, the General Assembly offers a radical alternative. It contends (1) that Pennsylvania may routinely deny children the resources they need to learn; (2) that the Commonwealth may maintain two vastly different systems of education, where failure is concentrated in certain communities; and (3) that, in defiance of the Supreme Court's command in this very case, the General Assembly has nearly limitless, unreviewable discretion about how much or how little "maintenance and support" it must provide the system of education that shapes children's futures.

The Pennsylvania students who were kindergartners when this case was filed in November 2014 are now adolescents ready to enter the seventh grade. The time has come for the General Assembly to do the job the people mandated for them almost 150 years ago.

VI. ARGUMENT

A. THE EDUCATION CLAUSE MANDATES A HIGH-QUALITY, CONTEMPORARY SYSTEM OF EDUCATION FOR EVERY CHILD IN THE COMMONWEALTH.

To evaluate both the Education Clause claim and the equal protection claim asserted by Petitioners, the Court must first determine the contours of the education system the Pennsylvania Constitution requires. Accordingly, the Court should begin by interpreting the Education Clause's "constitutional mandate" to provide a "thorough and efficient" education, and analyzing "the historic record concerning what, precisely, thoroughness and efficiency were intended to entail." *William Penn Sch. Dist.*, 170 A.3d at 457.

The results of this inquiry point in a single direction: the Education Clause's plain language and its well-documented history demonstrate that the General Assembly is obligated to provide every student in the Commonwealth with a high-quality, contemporary education. And as reflected in the Commonwealth's academic goals and objectives today, a high-quality education in the 21st century is an education that prepares all students for college, careers, and civic participation.

1. The plain language of the Education Clause requires the General Assembly to provide a universal, high-quality system of public education.

"In interpreting constitutional language . . . the Constitution's language controls and must be interpreted in its popular sense, as understood by the people

when they voted on its adoption." *Pa. Env't Def. Found. v. Commonwealth*, 161 A.3d 911, 929 (Pa. 2017) (quotation omitted). The Education Clause states:

> The General Assembly shall provide for 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.

Since 1874, the Clause has mandated that the General Assembly "shall provide for the maintenance and support of a thorough and efficient system" of schools. *William Penn Sch. Dist.*, 170 A.3d at 425 (quotation omitted). In plain terms, this language obligates the General Assembly to give every child in the Commonwealth equal access to a statewide system of education, and to sustain that system through ongoing, adequate financial support.[1]

The Education Clause requires the General Assembly not only to provide and sustain a system of public education, but one "of a specified quality, in this case 'thorough and efficient.'" *William Penn Sch. Dist.*, 170 A.3d at 457. At the time the phrase "thorough and efficient" was added to the Constitution in 1874, the word "thorough" was defined as "complete." *See* Websters' American Dictionary of the English Language 1377 (1865),

[1]At the time these words were written, "shall" indicated "a duty," "provide" meant "[t]o furnish," and "maintenance" and "support" were the acts of "keeping up" and "sustaining," while the word "system" called for "a regular union of . . . parts forming one entire thing." *See* Webster's American Dictionary of the English Language 802, 1054, 1212-13, 1330, 1345 (1865), https://archive.org/details/americandictiona00websuoft/mode/2up. *See also* Att'y Gen. Amicus Br. 5-6.

https://archive.org/details/americandictiona00websuoft/mode/2up. Courts interpreting state constitutions written during this era have concluded that a "thorough education" signified an education that is "more than simply adequate or minimal," but instead "connote[s] in common meaning the concept of completeness and attention to detail." *Robinson v. Cahill*, 287 A.2d 187, 210-11 (N.J. Super. Ct. Law Div. 1972); *see also Campbell Cnty. Sch. Dist. v. State*, 907 P.2d 1238, 1258 (Wyo. 1995) (noting that the contemporary definition of "thorough" was "fully executed; having no deficiencies; hence, complete in all respects; unqualified; perfect") (quoting The Century Dictionary (1889)). In other words, to be "thorough," an education must be comprehensive in its breadth and depth. *See* Petitioners' Proposed Conclusions of Law ("COL") ¶¶ 7-9; Att'y Gen. Amicus Br. 6-7.

At the time of the Pennsylvania Education Clause's ratification in 1874, "efficient" was commonly used to mean "effective." *See* Websters' American Dictionary of the English Language 430 (1865), https://archive.org/details/americandictiona00websuoft/mode/2up. The drafters of the 1874 Clause themselves used the word to mean successful or capable of producing good results. *See, e.g.*, Debates of the Convention to Amend the Constitution of Pennsylvania (1873) ("Pennsylvania Debates of 1873"), Vol. 7:685 ("Every man knows the history of the Prussian schools and their efficiency. . . . We know that Prussia has

the most perfect system in the world. . . ."); *id.* Vol. 2:436 ("[T]he appropriation from the State is of the highest importance to the efficiency of the public school system of Pennsylvania, and we should have a minimum below which this appropriation shall not go"); COL ¶ 8. During this time period, the Supreme Court used the term the same way when it discussed the performance of the Pennsylvania education system. *See In re Walker*, 36 A. 148, 150 (Pa. 1897) ("The object of these large appropriations was to add to the efficiency of the schools."); *see also Commw. ex rel. Hetrick v. Sch. Dist. Of Sunbury*, 6 A.2d 279, 281 (Pa. 1939) ("Of all the duties of school boards the selection of teachers is perhaps the most important. The success of the school depends upon the efficiency of the teachers.").[2]

Consistent with this understanding, when the Pennsylvania Supreme Court considered the Education Clause less than twenty years after it was ratified, it did not characterize the provision as a mandate to minimize public expense, but an obligation to provide every resource that was "reasonably necessary *to promote the work of education*" and "to do *all the necessary things*" to provide "the people . . .

[2] In the century since, other courts have also interpreted "efficient" to mean effective. *See, e.g.*, *Campbell Cnty. Sch. Dist.*, 907 P.2d at 1258 ("efficient" was defined as "acting or able to act with due effect; adequate in performance; bringing to bear the requisite knowledge, skill, and industry; capable, competent") (quoting The Century Dictionary (1889)); *Delawareans for Educ. Opportunity v. Carney*, 199 A.3d 109, 118 (Del. Ch. 2018) ("when the Delaware Constitution mandates that the State create and maintain 'a general and efficient system of free public schools,' it contemplates a system that educates students and produces educated citizens.").

a thorough and efficient system of public schools." *McLeod v. Cent. Normal Sch. Ass'n of Pa.*, 25 A. 1109, 1110 (Pa. 1893) (emphasis added). In sum, an "efficient" system of education is one that is capable of achieving its objective of producing educated students. *See* Att'y Gen. Amicus Br. 7-9.

The Education Clause concludes by stating that the thorough and efficient system of public education mandated by the Pennsylvania Constitution is "to serve the needs of the Commonwealth." Pa. Const. art. III, § 14. A natural reading of this phrase, which was added in 1967, confers an expression of purpose. *See* Att'y Gen. Amicus Br. 9. This interpretation is confirmed by the historical record, which indicates that the addition of the language — made as part of a broader effort to modernize the Constitution in the 1960s — was intended to clarify that "the system of public education should not necessarily be limited to serve the needs of children as the Constitution now provides." Petitioners' Proposed Findings of Fact ("FOF") ¶¶ 101-106 (quotation omitted); *see also* Att'y Gen. Amicus Br. 9-10.

As the Supreme Court observed, the addition of the phrase "to serve the needs of the Commonwealth" "does not textually repose in the General Assembly the authority to self-monitor and self-validate its compliance with that provision." *William Penn Sch. Dist.*, 170 A.3d at 460. The 1967 revisions to the Education Clause left intact the language requiring that the system be "thorough and efficient," and also did not alter the language obligating the General Assembly to

provide such a system: this "mandate[] limiting legislative power 'retain[s] [its] value even today by placing certain constitutional limitations on the legislative process.'" *William Penn Sch. Dist.*, 170 A.3d at 423 n.13 (quoting *Pennsylvanians Against Gambling Expansion Fund, Inc.*, 877 A.2d at 394). The 1967 amendments also left in place the requirement to include education in the general appropriations bill and the unique constitutional stature of the Secretary of Education. Pa. Const. art. III, § 12; art. IV, § 1. Accordingly, the Supreme Court has concluded that "the language upon which the instant case primarily hinges first appeared in our Constitution in 1874." *William Penn Sch. Dist.*, 170 A.3d at 425.

2. The history of the Education Clause establishes that the General Assembly has an absolute duty to provide a high-quality, contemporary education to all children.

The interpretation of a constitutional provision may also be informed by "the occasion and necessity for the provision; the circumstances under which the amendment was ratified; the mischief to be remedied; the object to be attained; and the contemporaneous legislative history." *Pa. Env't Def. Found.*, 161 A.3d at 929-30 (quotation omitted). This history includes the "debates and proceedings held in the course of constitutional conventions." *Hornbeck v. Somerset Cnty. Bd. of Educ.*, 458 A.2d 758, 770 (Md. 1983) (cited by *William Penn*, 170 A.3d at 450). As the Supreme Court has observed, states commonly look to the history of their

constitutional mandates to develop an understanding of what that mandate requires. *William Penn*, 170 A.3d at 450-51; *see also* COL ¶¶ 33-36.

The history surrounding Pennsylvania's Education Clause, which has been well-documented in witness testimony and case law, confirms that the General Assembly must provide a high-quality, contemporary education to every student in the Commonwealth.

i. Education has been a "vitally important part" of the Commonwealth since its founding.

As the Pennsylvania Supreme Court has observed, education has been a "vitally important part" of the Commonwealth's mission from its inception in 1776, when a precursor to the current Education Clause was first included in the Constitution. *William Penn Sch. Dist.*, 170 A.3d at 423 (quotation omitted); Tr. 930:7-12 (Black); *see also* FOF § III(A).

The Constitution's educational mandate has evolved in the centuries since. "By the Constitution of 1790 the people of this commonwealth imposed upon the Legislature the positive duty of establishing schools throughout the state for the free education of the poor." *Bd. of Pub. Educ. Of First Sch. Dist. v. Ransley*, 58 A. 122, 123 (Pa. 1904). The 1790 education provision read, "The Legislature shall, as soon as conveniently may be, provide by law for the establishment of schools throughout the State in such a manner that the poor may be taught gratis." Pa. Const. art. VII, § 1 (1790); *see* Tr. 931:13-932:14 (Black).

In 1834, the legislature expanded the system so Pennsylvania children could "'all fare alike in primary schools; receive the same elementary instruction; . . . and be animated by a feeling of perfect equality.'" *William Penn Sch. Dist.*, 170 A.3d at 421 (quoting XIII Register of Pa. 97 (1834)).

Nevertheless, over the subsequent 40 years, "statistics demonstrated that a large percentage of even Pennsylvania born children grown to manhood and womanhood under the public school system were illiterate." *In re Walker*, 36 A. at 149. At the time, "the administration of the school law was intrusted [sic] almost wholly to the particular locality constituting the school district," resulting in disparate educational opportunities for the Commonwealth's schoolchildren:

> In one district would be found excellent teachers, ample and comfortable school rooms, with suitable school apparatus, and a term of eight to ten months. In another district, perhaps in the same county, would be found incapable teachers, rude and insufficient buildings, not supplied with any of the aids to teacher, such as globes, blackboards, and other school furniture, with a term of four months.

Id.

By the time the next constitutional convention was called, it had become clear that "[t]he school laws, as administered, had not accomplished nearly to the full extent the purpose of its founders. Hence the mandate of the new constitution." *Id*.

ii. Since 1874, the Education Clause has guaranteed all children the right to a high-quality, contemporary education.

From November 1872 until December 1873, elected delegates from across the state convened to debate how best to amend the Constitution to address these concerns. FOF ¶ 65. The 1873 Convention resulted in a substantively revised Education Clause, "a provision that has remained in our Constitution in materially the same form" ever since. *William Penn Sch. Dist.*, 170 A.3d at 418; *see also* FOF ¶¶ 66-68.

The records of the 1873 Convention debates bolster the plain meaning of the Education Clause in three respects.[3]

First, the debates demonstrate that the 1873 Convention delegates sought to guarantee a high-quality education for the Commonwealth's children. This is evident not only in the delegates' decision to set a qualitative standard — "thorough and efficient," which had been used by other state constitutions to signify a good quality education — but in the delegates' exhaustive attention to detail in their quest to establish "a system in which all the children of the Commonwealth can acquire the highest branches of education[.]" Pennsylvania Debates of 1873, Vol. 2:426; *see also* FOF ¶ 97.

[3] The full history surrounding the 1873 Convention, including the Convention's voluminous debates and Professor Black's testimony at trial, is laid out in greater detail in Petitioners' Findings of Fact. *See* FOF § III(A).

The delegates' intent to provide a high-quality education is also evident in their consensus about what the system should deliver — not a certain set of textbooks, or a particular method of teaching, but the attainment of two end-goals, self-sufficiency and democratic participation. FOF ¶¶ 71-73; 97-99. As one delegate put it early on in the debates, and as was echoed many more times throughout the Convention, "it is the duty of the State, as a matter of justice and self-preservation, that every child in the Commonwealth should be properly educated and trained for the high and responsible duties of citizenship." Pennsylvania Debates of 1873, Vol. 2:472.

The delegates knew that the particular tools and resources needed to achieve these goals would change with the times. *See* FOF ¶¶ 98-99. As the Supreme Court has observed, the Education Clause "was designed to enable successive Legislatures to adopt a changing program to keep abreast of educational advances." *William Penn Sch. Dist.*, 170 A.3d at 440 (quotation omitted). The purpose of the constitutional guarantee was to ensure that as society progressed, the means necessary to meet the Clause's objectives would be provided. *See William Penn Sch. Dist.*, 170 A.3d at 466 (Dougherty, J., concurring) ("the provision and maintenance of a 'thorough and efficient' public education system must also evolve to ensure the Commonwealth's citizens are fully capable of

competing socially, economically, scientifically, technologically and politically in today's society").

It is also evident from the 1873 Convention debates that the delegates expected the General Assembly to provide the same caliber of education to all children, regardless of wealth, geography, race, or class. Until 1874, the Constitution only contemplated a system of public schools for poor children. FOF ¶¶ 64; 75. The 1873 Convention delegates not only expanded the provision of public education to "all children," but in so doing, explicitly rejected proposals to provide different educational opportunities to different subgroups of children. FOF ¶ 76. They did so because they recognized that the only way to ensure equity was to "have no distinctions, no separate provisions for one class of children over another," but instead to "provide for them all in the same section and all alike." Pennsylvania Debates of 1873, Vol. 6:46; *see also* FOF ¶¶ 77-78.

This understanding was the result of experience, not abstract principles. Facing a system with gross disparities in tax rates and educational opportunity, the delegates sought to require the General Assembly to create and sustain one statewide system, and to "make such appropriations as would equalize the burthens [sic] of supporting the system[.]" Pennsylvania Debates of 1873, Vol. 7:679; *see also* FOF ¶¶ 79-80, 86.

The delegates' decision not to mandate a *uniform* statewide system was not, as Legislative Respondents suggest, an effort to permit inequality of opportunity. Legislative Respondents' Proposed Findings of Fact and Conclusions of Law ("LR FOF/COL") ¶¶ 57-60. The delegates simply did not believe that uniformity was necessary — or even helpful — to provide all children with "an equal chance for a good and proper education." Pennsylvania Debates of 1873, Vol. 2:423; *see also* Att'y Gen. Amicus Br. 17-18. As Delegate Landis reported on behalf of the Committee on Education:

> The word uniform was considered in the committee, and the majority of its members thought the introduction of the word, if not fraught with some danger, would, at least be attended with considerable inconvenience. The word 'system,' of itself, suggests sufficient symmetry, and a sufficient measure of uniformity, without annexing it to so rigid a word as 'uniform,' because if the Legislature provides for the State a thorough and efficient system of education they will certainly have accomplished all that a constitutional requirement should ask of them.

Pennsylvania Debates of 1873, Vol. 2:423; *see also id.* Vol. 2:424; FOF ¶¶ 98-100. Confident in the belief that funding a single statewide system would ensure every school had the resources necessary to educate its students to the same high caliber, the delegates' decision to permit flexibility in how that education was delivered was an effort to preserve equality, not nullify it.

Finally, the 1873 Convention debates demonstrate that the delegates saw the 1874 revisions to the Constitution as a vehicle for not only imposing a mandate on

the legislature to fund a high-quality, contemporary, universal system of education, but to ensure that the General Assembly could not shirk its constitutional duties under the guise of legislative deference or discretion. To that end, the delegates took several steps to make education "a positive mandate that no Legislature could ignore." *Malone v. Hayden* ("*Teachers' Tenure Act Case*"), 197 A. 344, 352 (Pa. 1938).

As the Pennsylvania Supreme Court has observed on more than one occasion, the 1873 Convention occurred during a "unique time of fear of tyrannical corporate power and legislative corruption." *Pennsylvanians Against Gambling Expansion Fund, Inc. v. Commonwealth*, 877 A.2d 383, 394 (Pa. 2005); *William Penn Sch. Dist.*, 170 A.3d at 423 n.13. This climate of distrust arose in part from the General Assembly's track record on school finance during the decades preceding the 1873 Convention. *See* FOF ¶¶ 73-74; 84-86. Delegates described the state's education appropriations as "a mere pittance" and accused the legislature of being "very careful to make the sums very small." Pennsylvania Debates of 1873, Vol. 6:56; *see* FOF ¶ 85. The then-current arrangement, which mandated a system of public schools "at the expense of the State," and then forced localities to pay for that system, was decried by the delegates as a "farce." Pennsylvania Debates of 1873, Vol. 7:679.

In response, the delegates sought to remove education from the discretion of the General Assembly. There was, of course, the shift in the language of the Education Clause, replacing the deferential "as soon as conveniently may be" with the directive "shall." FOF ¶ 81. But the delegates went much further, establishing in the Education Clause both a qualitative floor — specifying that the new system had to be "thorough and efficient" — and a quantitative minimum, requiring the legislature to increase state education funding by at least 40 percent during the system's initial year. FOF ¶¶ 82-88.

The delegates buttressed these mandates with other protections that were woven into the structure of the Constitution. They elevated the Superintendent of Public Instruction to the status of a constitutional officer, in an effort to insulate him from political influence. *See* Pa. Const. art. IV, § 1 (1874); FOF ¶¶ 89-91. And they provided for the inclusion of education in the general appropriations bill, signaling that it should be regarded as an essential function of government, and therefore given the same level of priority as the judicial, legislative, and executive branches. Pa. Const. art. III, § 15 (1874); FOF ¶ 92.

The intent behind these standards and safeguards is clear: the delegates put them in place to ensure that the General Assembly could not "bargain[] away or fetter[]" the education system the delegates sought to constitutionally guarantee, *Teachers' Tenure Act Case*, 197 A. at 352, or allow education to "jostle on equal

terms with non-constitutional considerations that the people deemed unworthy of embodying in their Constitution," *William Penn Sch. Dist.*, 170 A.3d at 464.

The history surrounding the language changes made to the Education Clause in 1967, including the addition of the phrase "to serve the needs of the Commonwealth," demonstrates that the 1967 amendments did nothing to alter the standards and safeguards enshrined in the 1874 Clause. FOF ¶¶ 67; 101-110. "This is especially so in light of the well-documented suspicion with which the framers of the 1874 Constitution viewed legislative overreach." *William Penn Sch. Dist.*, 170 A.3d at 446. As the Pennsylvania Bar Association committee that proposed the 1967 amendment explained, the intent behind the addition of the phrase "to serve the needs of the Commonwealth" was simply to "make it clear that this system would benefit the overall Commonwealth, in addition to just the children." FOF ¶ 106 (quotation omitted); *see also* Att'y Gen. Amicus Br. 19-28.

3. In the 21st century, a high-quality, contemporary education provides all children with the resources they need to be college-and-career-ready citizens.

To understand what a high-quality education comprises today, the Court does not need to start from scratch. Instead, it is instructive to look at what the General Assembly, Pennsylvania Department of Education, and State Board of Education already acknowledge as the purposes and goals of public education. *See William Penn Sch. Dist.*, 170 A.3d at 451 (citing the purposes of public education

set forth in 22 Pa. Code § 4.11 as a source for developing a standard). Other courts have found an examination of these objectives, including the state's academic standards, probative in education challenges. *See, e.g.*, *Leandro v. State*, 488 S.E.2d 249, 259 (N.C. 1997) (While not "determinative," "[e]ducational goals and standards adopted by the legislature are factors which may be considered . . . [in] determin[ing] . . . whether any of the state's children are being denied their right to a sound basic education."); *Pauley v. Kelly*, 255 S.E.2d 859, 878 (W. Va. 1979) (In interpreting the constitution's education clause, "great weight will be given to legislatively established standards, because the people have reposed in that department of government 'plenary, if not absolute' authority and responsibility for the school system.").

In the Commonwealth, there is already consensus: a high-quality education is an education that prepares children for self-sufficiency and civic participation. *See* FOF ¶¶ 184-188. This understanding is embodied throughout state documents and in state admissions, including in the Pennsylvania Administrative Code, which the Supreme Court has noted echoes the standards in *Pauley* and *Leandro*, and which states that the purpose of public education is to "prepare[] students for adult life" and "to become self-directed, life-long learners and responsible, involved citizens." 22 Pa. Code § 4.11(b) (cited by *William Penn Sch. Dist.*, 170 A.3d at

452).[4] There is also consensus among the General Assembly, PDE, and the State Board about what such an education requires in the 21st century: the resources necessary to produce engaged, college-and-career-ready citizens, prepared to actively participate in the modern economy and the democratic process.

i. Pennsylvania's academic standards recognize that all children need a "thoroughly rigorous and effective" knowledge base to succeed in today's world.

The Commonwealth's consensus around what constitutes a high-quality, contemporary education is reflected in its academic standards: uniform, rigorous, achievable educational goals that were developed pursuant to legislative direction through a bipartisan process between 1999 and 2014. *See* FOF ¶¶ 198-205. Throughout this process, there was broad agreement that to succeed in life after high school, the Commonwealth's students needed a comprehensive, rigorous base of knowledge. *See* FOF ¶¶ 206-220. To that end, the Pennsylvania House of Representatives unanimously "urged" "the Secretary of Education and the State Board of Education . . . to ensure that Pennsylvania's academic standards are

[4] Contrary to Legislative Respondents' contention that the Pennsylvania Administrative Code is somehow "nonbinding" because the "[t]he State Board does not have a delegation of authority to determine the purpose of public education," LR FOF/COL ¶ 2417, the General Assembly has in fact granted the State Board that exact authority. *See* 24 Pa. Stat. § 26-2603-B ("The board shall have the power, and its duty shall be, to review the statements of policy, standards, rules and regulations formulated by the Council of Basic Education and the Council of Higher Education, and *adopt broad policies and principles, and establish standards governing the educational program of the Commonwealth*.") (emphasis added).

thoroughly rigorous and effective for all Pennsylvania students." Pa. H. Res. 338, PN 2084 (2013) (emphasis added); *see* FOF ¶ 207.

These academic standards are built on the premise that all children can learn. *See* FOF ¶¶ 111-116. As PDE has set forth in Pennsylvania's Consolidated State Plan under the Every Student Succeeds Act, "each student — regardless of race, economic circumstance, ability, or zip code — should be educated to the same high standards of achievement." PX-1830-20; *see* FOF ¶ 112. And as the State Board has committed in its Master Plan for Basic Education, "every student — regardless of ability or circumstance — is assured the opportunity for a comprehensive education and that our system of education must be of the highest caliber. To do less is to fail in our Constitutional duty and to beggar the future of this Commonwealth." *See* PX-35-4; FOF ¶ 113.

The state academic standards in place at any given time do not define the limits of the Constitution. But these standards, in these circumstances, appropriately reflect the Commonwealth's understanding of the goals of a high-quality education in the 21st century.

ii. The Commonwealth recognizes that the success of its education system must be measured by what it achieves, not just what it provides.

There is also consensus that the Commonwealth's education system should be measured by whether it is actually preparing children for college, career, and

civic participation. The statewide academic standards are intentionally keyed to these end-goals: they were developed based on feedback from the community about Pennsylvania's needs, and they "reflect the knowledge and skills our young people need to succeed in life after high school, in both postsecondary education and a globally competitive workforce." FOF ¶¶ 206, 211. They also reflect what all students need to participate in democracy. FOF ¶ 212.

Mastery of these academic standards is therefore a critical indicator of whether the system is achieving its objectives. To that end, for decades the General Assembly has required the State Board to develop statewide assessments "to measure objectively the adequacy and efficiency of the educational programs offered by the public schools of the Commonwealth" by "measuring the achievements and performance of students pursuing all of the various subjects and courses comprising the curricula." 24 Pa. Stat. § 2-290.1; *see* FOF ¶ 235. Today, these measurements are carried out through the Pennsylvania System of School Assessment (PSSAs) and the Keystone Exams. 22 Pa. Code § 4.51(b).

The broadest goal of the PSSAs and Keystones is to evaluate students' proficiency, which the General Assembly has charged the State Board with defining. *See, e.g.*, 24 Pa. Stat. § 1-102 (defining proficient as the "attainment of performance levels . . . that have been approved by the State Board of Education to reflect satisfactory academic performance"); *see* FOF ¶ 242. These assessments

provide the "objective" information the General Assembly has directed the State Board to obtain regarding performance, and PDE uses this information to help determine whether the system is meeting its goals of preparing students for college and careers. *See* FOF ¶¶ 256-257. The state has also set targets for proficiency rates, along with high school graduation and post-secondary attainment, to evaluate whether students are meeting the benchmarks necessary to succeed in today's world. FOF ¶¶ 222-234.

Given the impacts of long-standing funding inequities, PDE felt compelled to set different proficiency and graduation goals for different subgroups of students; however, Pennsylvania does not set different benchmarks for what is considered "good enough" for a poor student or a Black student. FOF ¶ 229. Instead, proficiency is a concrete, objective measure of what *all* students need to know to succeed, and "basic," defined as "marginal academic performance" and "partial command" of the academic standards, is not considered acceptable for any subgroup of student. *See* FOF ¶ 247. Similarly, the Commonwealth recognizes that high school graduation and post-secondary attainment are equally important indicators of success for all subgroups. *See, e.g.*, FOF ¶¶ 231-233.

iii. The Commonwealth acknowledges that educational resources improve student outcomes, and that some children will need more resources to succeed.

Finally, there is consensus in the Commonwealth that there are educational resources that can improve student outcomes, and that some children will need more of these resources than others to access their education.

PDE and the State Board have both explicitly identified a broad array of the key resources, supports, and interventions that are known to improve student achievement. *See* FOF ¶¶ 621-622; 625. These include qualified teachers and academic specialists, up-to-date learning materials, modern technology, safe facilities, and a wide range of other evidence-based strategies that help students learn. *See* FOF ¶¶ 629; 632-635 (early childhood education); ¶¶ 645-650 (teachers); ¶ 665 (academic support); ¶¶ 669-670 (MTSS); ¶¶ 682; 684-685 (social and emotional support); ¶ 705 (administrators); ¶ 735 (curriculum); ¶¶ 759; 761-762 (facilities); ¶¶ 848-849 (technology). State law reflects agreement with these strategies. For example, the Commonwealth's Ready-to-Learn Block Grant provides funding to implement a variety of academic practices and supports in order "to attain or maintain academic performance targets," including many of the same strategies that PDE has identified. 24 Pa. Stat. § 25-2599.2; FOF ¶ 623. The Costing Out Study similarly concluded that strategies such as small class sizes, high-quality preschool, and tutors lead to student improvement. FOF ¶ 624.

The Commonwealth also already recognizes that some children, including children living in poverty, English language learners, and children with disabilities need more of these kinds of supports and services to access their education. *See* FOF ¶¶ 118-144. In fact, this recognition is reflected in Pennsylvania's own education funding distribution formulas, which acknowledge that "different needs require different levels of resources." *See* FOF ¶¶ 145-165 (quotation omitted). And this recognition is validated by the widely accepted research that demonstrates increased funding used to acquire additional resources has a positive causal impact on student outcomes. FOF ¶¶ 166-182.

4. Legislative Respondents' proposed interpretation of the Education Clause cannot be reconciled with the Constitution's mandate or the Commonwealth's embodiment of what a high-quality, contemporary system of education must achieve.

In the face of this robust body of evidence, which demonstrates that the Education Clause guarantees a high-quality, contemporary education, and that such an education today must prepare students to become college-and-career-ready citizens, Legislative Respondents have offered an alternate reading of the Clause that contradicts the Constitution's text and history and attempts to relitigate this Court's authority to interpret the Constitution.

Legislative Respondents' interpretation of the Clause relies exclusively on the 1967 addition of the phrase "to serve the needs of the Commonwealth." As

detailed *infra*, the text and legislative history surrounding the addition of that phrase is clear. *See* Section VI(A)(1)-(2). Nevertheless, Legislative Respondents argue that this new language granted Legislative Respondents an "exclusive" "duty of determining the needs of the Commonwealth," and that therefore today's Education Clause entitles the General Assembly "even more deference than usual" in determining whether the system of education they have provided is constitutionally adequate. LR FOF/COL ¶¶ 2412-13.[5]

This reading of the Clause should be rejected, not only because Legislative Respondents' interpretation contradicts the plain language of the Constitution and runs directly contrary to the clear record of legislative intent behind both the 1874 Clause and the 1967 amendments, but because at base, their theory is nothing more than an attempt to relitigate the Supreme Court's justiciability decision in this case. That includes the foundational principles of governance that decision was based upon: "The foundation for the rule of law as we have come to know it is the axiom that, when disagreements arise, the Court has the final word regarding the

[5] And as bold as this argument is in the face of a Supreme Court decision squarely rejecting it, it nevertheless undersells what Legislative Respondents actually want this Court to do. Legislative Respondents made it clear during trial that they do not merely want the Court to "deploy a rubber stamp in a hollow mockery of judicial review" and bless the General Assembly's determinations about the needs of the Commonwealth. *William Penn Sch. Dist.*, 170 A.3d at 456. They go further, asking the Court to *ignore* much of their own legislation, their own standards, their own assessments, and their public statements, and rubber stamp the idea that whatever system exists at any given moment must necessarily be serving the needs of the Commonwealth, because only the General Assembly is entitled to determine those needs. This *ipse dixit* assertion is no substitute for constitutional analysis.

Constitution's meaning." *William Penn Sch. Dist.*, 170 A.3d at 436. It continues with the Supreme Court's repeated admonition that the theory that only the General Assembly represents the people is "an inappropriate departure from basic constitutional principles of checks and balances." *Carter v. Chapman*, 270 A.3d 444, 461 (Pa. 2022) ("[D]eclining to afford preferential treatment to a plan passed by the Legislature but vetoed by the Governor is not only logical, but also comports with this Commonwealth's constitutional precepts.") (citation omitted); *Scarnati v. Wolf*, 173 A.3d 1110, 1120 (Pa. 2017) ("No bill may become law without first being submitted to the Governor for approval or disapproval. Although legislative power is vested in the General Assembly pursuant to Article II of the Constitution, we have described the Governor's authority to veto a bill as a form of limited legislative power.") (citation and quotation omitted). And it ends with the Court's admonition that "[i]t is fair neither to the people of the Commonwealth nor to the General Assembly itself to expect that body to police its own fulfillment of its constitutional mandate." *William Penn Sch. Dist.*, 170 A.3d at 464.

Moreover, Legislative Respondents' proposed articulation of what the Education Clause requires — "an opportunity to obtain a standard basic public education" that they argue should only be evaluated by the system's "inputs", LR FOF/COL ¶¶ 2401-35 — ignores every premise embedded in the Commonwealth's

requirement of a high-quality, contemporary education for all children. First, Legislative Respondents' interpretation presumes that there is such a thing as a single "standard basic" education, and that there exists a typical student that would be adequately served by receiving only what Respondents call the "basics." In reality, research and experience demonstrate that the level and type of inputs necessary to give a student access to education must be defined by that student's needs. *See, e.g.*, FOF § III(B)(2); FOF ¶¶ 627-628. Second, Legislative Respondents' proposed standard describes a system that will pass constitutional muster so long as it provides students certain "standard basic" "instrumentalities of learning" even if those instrumentalities are not actually sufficient to provide students with the "standard basic" skills they need — such as the ability to read and write. *See, e.g.*, LR FOF/COL ¶¶ 2402, 2427, 2435.

Legislative Respondents' interpretation of the Clause also ignores that both the framers of the Education Clause and the Commonwealth itself view the system of public education as having concrete, substantive objectives, and that the system's effectiveness must be — and in fact already is, including by Legislative Respondents — continuously evaluated in relation to those end-goals. FOF § IV(D). Contrary to Legislative Respondents' claim that "there is no textual basis" for evaluating the effectiveness of the education system by looking at outcome-based measures, LR FOF/COL ¶ 2426, the Education Clause explicitly

contemplates this by mandating a system that is "thorough and efficient" and that "serves the needs of the Commonwealth."

* * *

In sum, both the plain language and the history surrounding the development of the Education Clause provide a clear articulation of the Clause's meaning — a meaning that is echoed by the Commonwealth's own goals and objectives for its public education system. The Court should therefore hold that the Education Clause requires the General Assembly to maintain and support a system of public education that provides all children with the resources they need to become engaged, college-and-career-ready citizens, prepared to actively participate in the modern economy and the democratic process.

B. FRAMEWORK FOR EVALUATING PETITIONERS' EDUCATION CLAUSE CLAIM

Once the Court establishes what the Education Clause requires, it must devise "a broad, flexible judicial standard for assessing legislative fulfillment of [that] constitutional mandate to furnish public education while remaining sensitive to the legislature's sole prerogative to negotiate the particular policies that will satisfy it." *William Penn Sch. Dist.*, 170 A.3d. at 450-51.

Courts across the country have developed a straightforward, manageable approach for evaluating whether a school funding system is constitutional. As set forth below, under this framework courts examine whether the funding system

achieves or is likely to achieve the quality of education that the state's constitution requires. To make this determination, courts consider the funding available to districts, the educational resources districts can bring to bear for their students, and the results that students achieve as a consequence.

1. A court examining a claim under the Education Clause should evaluate whether the system achieves or is reasonably likely to achieve the constitutional mandate of a high-quality, contemporary education for all children.

To determine whether Respondents have fulfilled the Education Clause's mandate, the Court should consider whether the Commonwealth's education funding scheme "achieves or is reasonably likely to achieve the constitutionally prescribed end." *McCleary v. State,* 173 Wash. 2d 477, 519 (2012) (quotation omitted); *see also Gannon v. State*, 319 P.3d 1196, 1237-38 (Kan. 2014); COL § II(A); *cf. McLeod*, 25 A. at 1110 ("The maintenance of the public schools under these constitutional provisions imposed an obligation to erect and maintain suitable buildings, to furnish conveniences and equipments reasonably necessary to promote the work of education, to provide and employ competent teachers, and to do all the necessary things . . . that the people may have a thorough and efficient system of public schools.").

This standard requires the Court to assess "whether the education funding apparatus as a whole gives rise to a constitutional violation." *Abbeville Cnty. Sch. Dist. v. State*, 767 S.E.2d 157, 161-62 (S.C. 2014). This is because, unlike

traditional negative rights jurisprudence, Pennsylvania's Education Clause confers upon its citizens a "a true right, created by a positive constitutional grant," *McCleary*, 269 P.3d at 248 (quotation omitted), or, put more succinctly, "a positive constitutional right," *Martinez v. State*, 2018 WL 9489378, at *8 (N.M. Dist. Ct. July 20, 2018).[6]

Therefore, because Petitioners' claim is that the General Assembly has failed to fulfill its affirmative duty under the Education Clause, the Court is not being asked to evaluate "whether the State has done too much, but . . . whether the State has done enough" to meet the constitutional standard set forth in the Education Clause. *McCleary*, 269 P.3d at 248.[7]

While this standard speaks to reasonableness, and therefore does not require perfection, it is not the so-called "reasonable relation test" from the now-overruled *Danson v. Casey*, 399 A.2d 360, 366 (Pa. 1979), and *Marrero v. Commonwealth*, 739 A.2d 110, 112 (Pa. 1999). In that test, when examining whether the General Assembly has overstepped the bounds of the Education Clause — generally speaking, in issues surrounding the regulation of teacher contracts — courts assess

[6] Negative constitutional rights, by comparison, include constitutional freedoms or privileges, such as freedoms of speech and religion, which "exist because the constitution has, in a negative sense, provided for noninterference." *McCleary*, 269 P.3d at 248 (quotation omitted).
[7]For similar reasons, as Petitioners explained in their Conclusions of Law, the burden of proof applicable to Petitioners' claim is a preponderance of the evidence. *See* COL § IV(A). Petitioners prevail, however, under any burden.

whether "legislation has a reasonable relation to the purpose expressed" in the Education Clause. *Reichley v. N. Penn Sch. Dist.*, 626 A.2d 123, 127 (Pa. 1993) (quoting *Teachers' Tenure Act Case*, 197 A. at 352). But the "reasonable relation test" is intended to evaluate "whether the fruits or effects of . . . legislation impinge the [Education Clause] by circumscribing it or abridging its exercise by future legislatures." *Id.* at 127-28 (quotation omitted). Accordingly, to apply that test, courts ask whether a piece of legislation is related to education, and if so, "whether the legislation purports to limit the further exercise of legislative power with respect to the subject of public education." *Reichley*, 626 A.2d at 128.

Petitioners' case is about something different altogether: whether "the General Assembly and other Respondents collectively have failed to live up to the mandate, embodied in our Constitution's Education Clause" to provide all children a high-quality education. *William Penn Sch. Dist.*, 170 A.3d at 417.[8] Therefore, the Court should assess whether the General Assembly has created a system that

[8] While he disagreed that the entirety of *Danson* and *Marrero* should be overturned, Chief Justice Saylor agreed that those cases were wrongly decided to the extent they used the reasonable relation test to examine the General Assembly's failure to act in accordance with its constitutional mandate. *See William Penn Sch. Dist.*, 170 A.3d at 486 (Saylor, C.J., dissenting) ("[T]he reasonable-relation test was not designed to evaluate whether a branch of state government has fulfilled its constitutional obligations. It was wrongly applied in this way in *Danson* and *Marrero II*, and the experience of those cases teaches that the standard has little efficacy as means of enforcing legislative obligations in any event. . . . In the present controversy, the substance of Plaintiffs' allegations is that the political branches have not acted sufficiently to fulfill their duties, not that they have acted beyond the authority assigned to them by the state charter.").

provides or is likely to provide a high-quality, contemporary public education that equips every child to engage fully in democracy and citizenship, meaningfully participate in the economy, and meet the workforce needs of the Commonwealth.

2. In order to evaluate whether the funding system is achieving its constitutional mandate, the Court should examine the funding provided, the educational resources available to school districts, and the results they are able to achieve.

To determine whether a funding system is achieving its constitutional imperative, courts have examined the funding available to districts, the educational resources districts are able to provide, and the outcomes that result from those resources. *See Maisto v. State*, 196 A.D.3d 104, 111 (N.Y. App. Div. 2021) (examining whether a "defendant has provided inadequate inputs — such as physical facilities, instrumentalities of learning and teaching instruction — which has, in turn, led to deficient outputs, such as poor test results and graduation rates"); *Gannon v. State*, 390 P.3d 461, 488 (Kan. 2017) ("[I]t is appropriate to look . . . to both the financing system's inputs, *e.g.*, funding, and outputs, *e.g.*, outcomes such as student achievement."); *Martinez*, 2018 WL 9489378, at *12-*20 (same).

Thus, in order to determine whether the Commonwealth has satisfied its constitutional mandate under the Education Clause, this Court should review the financial and educational "inputs" to determine whether they are deficient; the

"outputs" — or results — to determine whether they demonstrate that the system is working or is instead suffering from systemic failure; and the Commonwealth's actions, to determine whether they are "a substantial cause of the constitutional violation." *Campaign for Fiscal Equity, Inc. v. State*, 801 N.E.2d 326, 328 (N.Y. 2003). This framework not only accords with the principles of proving violations in education funding cases, but also matches Pennsylvania's broad framework for establishing causation. *See, e.g.*, *Jones v. Montefiore Hosp*., 431 A.2d 920, 923 (Pa. 1981) ("Proximate cause is a term of art, and may be established by evidence that a defendant's . . . failure to act was a substantial factor in bringing about the harm inflicted upon a plaintiff.").[9]

C. RESPONDENTS HAVE VIOLATED THE EDUCATION CLAUSE

The current funding system does not, will not, and cannot achieve the Constitution's mandate of a thorough and efficient education. Petitioners have demonstrated that the General Assembly has adopted an inadequate, inequitable, and irrational funding system, and as a result, school districts are deprived of the educational tools, strategies, and supports necessary to prepare students for college and careers. Petitioners have also established that this system is failing

[9] The Supreme Court has "never insisted that a plaintiff must exclude every other possible cause for his or her injury, and in fact, . . . have consistently held that multiple substantial causes may combine and cooperate to produce the resulting harm to the plaintiff." *Rost v. Ford Motor Co.*, 151 A.3d 1032, 1051 (Pa. 2016).

Pennsylvania's students in droves, leaving a staggering number of children unable to gain proficiency on state academic standards, graduate from high school, or enroll in and complete college.

1. Respondents' system is inadequately, inequitably, and illogically funded.

The simplest way to identify Respondents' failure to create a constitutionally compliant system is to consider their consistent failure to measure what that system needs in the first instance.

In most ways, Respondents do not hesitate to dictate the contours of Pennsylvania's education system. First, outside of this litigation they largely concede that the end-goal of the system is and must be to produce college-and-career-ready students. *Supra* Section VI(A)(3); FOF § IV(B)-(C). Second, through their actions and admissions, they prescribe academic standards calibrated to achieve this goal. *Id.* Third, they mandate the levels of achievement that determine if students have mastered those standards. *Supra* Section VI(A)(3); FOF § V. And fourth, they concede that certain programs and resources will help more students succeed. FOF § IV(A). Yet when the task is identifying the level of resources school districts need to accomplish these goals, Respondents take a different approach: willful ignorance. *See* FOF § VI(J). Respondents make no attempt to measure what the system requires to serve the needs of the Commonwealth generally, or to allow students to graduate college-and-career ready specifically. *Id.*

Respondents were not always so reticent. For three years, pursuant to Section 2502.48 of the Pennsylvania School Code, the Commonwealth published estimates of what it would cost to give all children the opportunity for a high-quality education. FOF § VI(E)(3). Yet at a time when these adequacy targets showed that schools remained underfunded by $4.5 billion (including wide shortfalls for Petitioners), the General Assembly instead cut funding and deleted the goal of closing the shortfalls. FOF ¶¶ 365-367. Meanwhile, PDE stopped calculating the adequacy targets themselves. *Id*. And when the Basic Education Commission was empaneled to determine how state education funding should be distributed to better meet districts' needs, the General Assembly prohibited the Commission from studying how much state education funding districts needed to begin with. FOF ¶¶ 161-162.

Respondents do not dispute that updating Pennsylvania's adequacy targets reveals massive shortfalls. Instead, they deride those calculations as "principally an exercise in arithmetic." LR FOF/COL ¶ 2001. But they acknowledge that (1) a formula exists, which until recently Respondents agreed was law, that provides a reasonable estimate of how much funding Pennsylvania school districts need using similar techniques and assumptions as the Fair Funding Formula; (2) updating this formula is straightforward; and, (3) this update reveals that Pennsylvania schools

are underfunded by over $4 billion today, with every Petitioner District suffering from drastic shortfalls. FOF § VI(E).[10]

Respondents do not deny their avoidance — they embrace it. *See* FOF § VI(J). But Respondents' ten-year failure to calculate the funding amounts school districts need is not a defense; it is an admission. *See Campbell Cnty. Sch. Dist.*, 907 P.2d at 1278-79 ("A legislatively created finance system which distributes dollars without regard for the need to level the playing field does not provide an equal opportunity for a quality education."). And in any event, even were Section 2502.48 actually repealed as a matter of law — which it was not, *see* COL § IV(C) — Respondents through their inaction have ensured that the law's estimate of a $4.6 billion shortfall remains the Commonwealth's reasonable, conservative, and *exclusive* assessment of what Pennsylvania schools need today as a matter of fact. FOF § VI(E)(4).

The funding system's inadequacy is matched by its inequity and irrationality. That includes the big picture: requiring more from the needy while providing more to the comfortable. FOF § VI. And it includes the granular details,

[10] The fact that the original source for state law was a costing-out study that Legislative Respondents now deem "unscientific" misses the point. Even Respondents' own witnesses agree that costing-out studies are reasonable estimates for a court and legislature to use. FOF ¶¶ 357-360; *see also Gannon*, 390 P.3d at 502-03 ("[W]e acknowledge that the estimates of the various cost studies are just that: estimates. But they do represent evaluations that we cannot simply disregard."). Moreover, to the extent the Basic Education Formula utilizes different student weight factors, Dr. Kelly testified that utilizing them would in fact slightly increase the adequacy shortfalls he reported. FOF ¶ 370.

such as a charter school funding system that requires tuition payments from school districts in a way that PDE admits has a "disproportionately negative impact on districts," does not "reflect educational need," and is in "great need" of reform. *See* FOF § VI(F)(3).

The system's most obvious irrationality is its "Hold Harmless" provision, *see* FOF § VI(F)(1), which Speaker Cutler's own witness agreed is not based on any legitimate difference in student need, and which results in districts with the same needs getting far different results, all in perpetuity. FOF ¶ 384. Courts have readily noted that such provisions create significant roadblocks to a well-performing educational system. *See McCleary*, 269 P.3d at 253-54 ("The legislature continued to fund schools using the formulas adopted in the Basic Education Act — formulas that were based on a snapshot of actual staffing levels and school district expenditures in the mid-1970s, not the level of resources needed to allow students to meet the new performance-based standards . . . . By 2005, the lack of correlation between the funding formulas and the goals of the education system had become obvious."); *DuPree v. Alma Sch. Dist. No. 30 of Crawford Cnty.*, 651 S.W.2d 90, 91-92 (Ark. 1983) ("[T]he base aid year is permanently held at the 1978–79 level, and the inequities resulting from thirty years of the district 'hold-harmless' provision are being carried forward without compensating adjustments.").

The ultimate cause of Hold Harmless's devastating impact is the General Assembly's decision to create a zero-sum game of winners and losers, where one district's desire for stability comes at the expense of another district's current needs.[11] And as Dr. Kelly made clear, the impact of Hold Harmless falls most heavily on low-wealth districts, Black students, and Latino students. FOF ¶¶ 437-38, 543-44.

2. As a result of Respondents' deliberate choices, Petitioners and other low-wealth school districts do not have the resources they need to provide a constitutionally adequate education.

While it is conceivable that even despite the General Assembly's failures to "consider[] actual costs, a constitutionally adequate education nevertheless could have been provided — albeit perhaps accidentally or for worthy non-cost-based reasons," *Gannon*, 319 P.3d at 1237, the students of the Commonwealth have not been so lucky.

i. Petitioners and other low-wealth districts have insufficient educational resources.

Petitioners have proven that under the current funding scheme, Petitioners and other low-wealth districts do not have the educational resources they need to educate their students.

[11] The solution to this zero-sum game is obvious. "Having no losers in the system requires there be no shrinking pie but a pie of the size needed. Once education need is determined, the pie must be large enough to fund that need." *Campbell Cnty. Sch. Dist.*, 907 P.2d at 1278-79.

There is wide consensus that "there are strategies that improve students' success and that funding directed towards those strategies is what improves student outcomes." FOF ¶ 168 (quoting Stem Dep. Tr. Vol. 2, 501:10-13). School leaders explained, and Respondents' witnesses conceded, that these programs help students perform and flourish. FOF ¶¶ 166-168. These are not frills, but the basics, identified by state law, state reports, state officials, and state witnesses. *See* FOF § III(B). In other words, although Legislative Respondents now take a position "loosely translated to 'Money Does Not Matter,' [t]his position was not in fact what was espoused by the defense witnesses" in court or by Respondents' actions out of court. *Martinez*, 2018 WL 9489378, at *20 (citing, among others, Dr. Eric Hanushek for the importance of specific programs and for the proposition that "there's no doubt that money can make a difference to school outcomes" (quotation omitted)).

Every superintendent that testified at trial explained that in real terms, underfunding means they do not have the financial ability to provide sufficient numbers of these strategies and resources to their students. As a result, districts triage the educational needs of their students. In other words, when a five-year-old child enters kindergarten in Greater Johnstown or William Penn needing additional help to read at an age-appropriate level, she often will not receive the reading

specialist, small-group instruction, or other fundamental interventions she requires, because the school district cannot afford them.

From interventionists to counselors, the examples are myriad, essentially undisputed, and have repeatedly been found by courts in others states to be probative in determining violations of education clauses. *See* FOF § IX; *see also, e.g.*, *Maisto*, 196 A.D.3d at 152 ("The compelling evidence demonstrated that, in order to place a sound basic education within the reach of such students, they require early interventions, more time on task and other supplemental programming, as well as support from adequate numbers of guidance counselors, social workers or other similar professionals."); *Martinez*, 2018 WL 9489378, at *13 ("At-risk students begin school with certain disadvantages which are not the making of the school system. This fact does not, however, mean that at-risk students cannot learn if given proper support. Various programs have been shown to provide such support. These include quality full-day pre-K, which addresses the issue of at-risk students starting school behind other children; summer school which addresses the loss of skills over the school break; after school programs, smaller class sizes, and research-based reading programs.") (citation omitted); *Gannon*, 390 P.3d at 491-92 ("[C]ertain successful strategies and methods exist that can improve student achievement and extend learning opportunities, such as longer school days, Saturday school, all-day kindergarten, before and after school

programs, extracurricular activities . . . , and the employment of qualified teachers. . . . [S]chool programs going beyond the basics of math and English Language Arts (ELA) . . . are known to be successful educational approaches that produce consistent progress and achievement of academic success."); *Hoke Cnty. Bd. of Educ. v. State*, 599 S.E.2d 365, 390 (N.C. 2004) ("[T]he State was failing both to identify 'at-risk' students and to address their needs with educational resources that would provide tutoring, extra class sessions, counseling, and other programs that target 'at-risk' students in an effort to enable them to compete among their non 'at-risk' counterparts and thus avail themselves of their right to the opportunity to obtain a sound basic education."); *State v. Campbell Cnty. Sch. Dist.*, 32 P.3d 325, 327 (Wyo. 2001) ("Without adequate funding for costly repairs, renovations, and building construction, school districts faced with non-routine major expenditure items must choose from the lesser of two evils: either ignoring the problem or, if that is no longer an option, diverting operational funding intended for teachers' and staff salaries and essential school programs.").

ii. In Respondents' funding system, those districts who need the most have the least.

Trial also showed that the consequences of inadequacy are not evenly distributed across the Commonwealth. As Petitioners proved, the current funding scheme leaves low-wealth districts with far fewer financial resources than high-wealth districts, including wide adequacy gaps according to the state's own

measures. FOF § VI(A)-(D). Moreover, those same low-wealth districts have student populations with greater needs. FOF ¶¶ 326-327. Accordingly, when those resources are adjusted for need, the gaps between the rich and the poor become tremendous, with high-wealth districts receiving nearly $8,000 (or 65%) more per need-adjusted student than low-wealth districts.[12] FOF ¶ 329. All of this happens despite the fact that low-wealth districts tax their residents at higher rates to try to raise the resources to educate their students. FOF ¶¶ 331-333.

And this statewide pattern is embodied by Petitioner Districts themselves, all of which are low-wealth, high-need, high-tax, low-spending districts, without a way out of the vise in which they have been placed. *See* FOF § VII. As Executive Respondents acknowledge, the "conditions and experiences" of Petitioners and Philadelphia "are representative of many of the under-resourced schools throughout the Commonwealth." Tr. 14839:15-18 (Executive Respondents closing).

[12] Legislative Respondents suggest that giving some districts more funding to put opportunity within reach of their students is merely a "policy position". LR FOF/COL ¶ 302. Even assuming, *arguendo*, that the undisputed evidence (including various admissions) demonstrating some children need more to succeed is a "policy position," Legislative Respondents ignore that it is *their* policy position — albeit one they have failed to ensure can be realized for the children who need it. *See* FOF §§ III(B)(2), IX(A).

3. Respondents' system is failing its students by every outcome measure.

Finally, to evaluate whether Respondents are adhering to their "constitutional mandate to furnish education of a specified quality," *William Penn Sch. Dist.*, 170 A.3d at 457, the Court should evaluate how students within the system *are actually performing*. *See* Section VI(A)(3) *supra*.[13]

As demonstrated at trial, the results of the deprivations and triaging are catastrophic. FOF § X. By way of example, over 300,000 Pennsylvanian children fail to reach proficiency in ELA/Literature each year, a number eclipsed by the nearly 500,000 students who fail to meet proficiency in math. FOF ¶¶ 865-866. And while Pennsylvania has identified a need to have 60 percent of its population obtain post-secondary degrees, it has fallen short of that target by hundreds of thousands of graduates, with post-secondary achievement rates well below what will ever allow the Commonwealth to meet its goal. FOF ¶¶ 896-905.

[13] Any single resource or outcome, standing alone, is unlikely to be a per se measure of compliance. And some indisputably necessary resources — such as safe, modern facilities — will have less of a quantifiable impact on student scores. But as evidenced by the above, student outcomes are repeatedly used as evidence of constitutional noncompliance. As the North Carolina Supreme Court explained, "test score statistics and their analysis qualif[y] *as contributing evidence* that . . . students [are] being denied their constitutional right to the opportunity for a sound basic education. In other words, evidence tending to show . . . students were faring poorly . . . [is] relevant to the primary inquiry: [Are] . . . students being denied the opportunity to obtain an education that comports with" an educational mandate. *Hoke Cnty. Bd. of Educ.*, 599 S.E.2d at 382-83; *but see Abbeville Cnty. Sch. Dist.*, 767 S.E.2d at 167 (finding that insufficient student outcomes, even with sufficient inputs, is indicative of failure).

Circumstances are far worse for those who most need the help, as low-wealth communities suffer from especially poor outcomes. Their students fail to meet state standards from the beginning of their education to the end, graduate at some of the lowest rates in the Commonwealth, and rarely go on to acquire post-secondary degrees. FOF § X(A). By any measure Pennsylvania uses to quantify achievement, low-wealth communities generally and Petitioners specifically suffer from pervasive underachievement. FOF ¶¶ 870-871 (demonstrating gaps of up to 38% from the statewide average). Courts have routinely found such performance levels to be evidence of state constitutional deficiencies. *See, e.g.*, *Gannon*, 390 P.3d at 469 (one quarter all students, one third of low-income students, one third of Latino students, and half of Black students failing to meet state proficiency standards is unacceptable); *Martinez*, 2018 WL 9489378, at *16 ("The majority of New Mexican fourth, eighth, and eleventh graders are not proficient in math or reading."); *Abbeville Cnty. Sch. Dist.*, 767 S.E.2d at 168 (passage rates on state exams ranging between 36% and 50% found to be unacceptable); *Hoke Cnty. Bd. of Educ.*, 599 S.E.2d at 383 (finding probative that plaintiff district "students trailed the state average in each grade, with gaps ranging from 11.7% to 15%").

Moreover, as in other states, in the Commonwealth "the 'all student' averages emphasized by the State hide a pernicious problem, *i.e.*, an 'achievement gap,' between all students and subgroups of students." *Gannon*, 390 P.3d at 495.

Black, Latino and low-income students, concentrated in the most underfunded districts, fail to meet the Commonwealth's achievement standards at rates that shock the conscience. For example, Black students, who are concentrated in the lowest-funded districts with less effective teachers, fail to meet state math standards 80% of the time, more frequently fall short on advanced placement tests, complete high school at far lower levels than their peers, and even when they do, fail to achieve a two or four-year post-secondary degree 80% of the time. FOF §§ XI(H)(2), X(B). The inequities are so profound — by admission some of the largest in the nation — that PDE does not believe they can be solved in thirteen years. FOF ¶¶ 910-913. The same is true for low-income students, with achievement gaps between *low-income children* in high-wealth schools and *low-income children* in low-wealth schools that are in line with what other courts have found to be unacceptable gaps between different subgroups of students. *Compare* FOF ¶ 937 (low-income students perform 16-19% better in high-wealth schools versus low-wealth schools) *with Martinez*, 2018 WL 9489378, at *17 (gaps of 10% for economically disadvantaged students versus all students) *and Gannon*, 390 P.3d at 495 (gaps of 14-16% for Black and Latino students versus all students).[14]

[14] By contrast, it is inappropriate to use evidence of student growth to evaluate constitutional compliance when that data — like the analysis provided by the Pennsylvania Value Added Assessment System (PVAAS) — does not measure movement towards proficiency. *See Martinez*, 2018 WL 9489378, at *17 ("Defendants argue that proficiency on test scores and even differences between at-risk student scores and other student scores are not what matter. Rather Defendants urge the Court to find that the educational outputs are sufficient because there has

No one — including Respondents and their witnesses — disputes that there are a variety of strategies and tools that will allow more students to share in opportunity, and to achieve at greater rates.[15] Yet as a result of Respondents' funding system, low-wealth districts like Petitioners and Philadelphia cannot give their students these resources.

* * *

In sum, system that identifies what resources students need, deprives them of the funding necessary to obtain those resources, and then sits by while they fail, is a system that is failing its constitutional mandate.

4. Legislative Respondents' attempts to defend the school funding system fail as a matter of fact and law.

Struggling to justify the unjustifiable, Legislative Respondents ask this Court to ignore the testimony of PDE, ignore the testimony of their own fact and

---

been growth or improvement in at-risk student scores. . . . [T]he Defendants' argument that growth is what matters is insufficient to carry the day. For the educational outputs to overcome the failure to provide adequate educational inputs, more than nominal growth must be shown — real improvement in proficiency should be demonstrated.").

[15]To the extent Legislative Respondents suggest that Petitioners must prove a specific intervention or set of interventions will have a mathematically precise relationship with a specific graduation rate or proficiency rate, this is a test of their own making. The actual standard is much more basic: "a party bringing a civil action must prove, by direct or circumstantial evidence, facts by which the trier of fact can reasonably draw the inference urged by the plaintiff." *Fitzpatrick v. Natter*, 961 A.2d 1229, 1241 (Pa. 2008). Similar arguments have been made and rejected in school funding lawsuits. *See Campaign for Fiscal Equity, Inc.*, 801 N.E.2d at 335 ("[P]laintiffs' burden was not to prove that some specific number is the maximum class size beyond which children 'cannot learn.' It is difficult to imagine what evidence could ever meet a burden so formulated."). As noted, Respondents and their witnesses have already conceded the basic issue that there are educational resources that can improve student outcomes.

expert witnesses, ignore their public statements, ignore their laws, and even ignore the Supreme Court's holding in this case, and instead embrace a series of arguments that cannot withstand the most deferential scrutiny.

i. Respondents' attempts to re-litigate the Supreme Court's decision fail as a matter of law.

a) The demands of the Education Clause may not jostle with non-constitutional considerations.

Throughout trial and in their post-trial filings, Legislative Respondents have returned again and again to the truism that "the Commonwealth's budget must be used to fund many important state priorities in addition to education." LR FOF/COL ¶ 264. The Supreme Court has acknowledged that there are surely "many competing and not infrequently incompatible demands our legislators face to satisfy non-constitutional needs, appease dissatisfied constituents, and balance a limited budget in a way that will placate a majority of members in both chambers despite innumerable differences regarding policy and priority." *William Penn Sch. Dist.*, 170 A.3d at 464. But the Supreme Court has explicitly rejected this rationale as a justification for the system's failures, and has underscored that it is the duty of courts to shield the Education Clause from the implications of such an argument:

> Judicial oversight must be commensurate with the priority reflected in the fact that for centuries our charter has featured some form of educational mandate. Otherwise, it is all but inevitable that the obligation to support and maintain a "thorough and efficient system of public education" will jostle on equal terms with non-constitutional considerations that the people deemed unworthy of embodying in their

> Constitution. **We cannot avoid our responsibility to monitor the General Assembly's efforts in service of its mandate and to measure those effects against the constitutional imperative, ensuring that non-constitutional considerations never prevail over that mandate**.

Id. (emphasis added).

The Constitution creates a mandate for the General Assembly, and they must meet it: "[F]inancial burden is of no moment when it is weighed against a constitutional right." *Blum v. Merrell Dow Pharm. Inc.*, 626 A.2d 537, 548 (Pa. 1993). As such, "financial concerns [can] not in any way dilute the [General Assembly's] primary responsibility to maintain 'a thorough and efficient system of public schools.'" *Sch. Dist. of Phila. v. Twer*, 447 A.2d 222, 224 (Pa. 1982) (quoting Pa. Const. Art. III, § 14).

b) Calls to local control cannot excuse a constitutional violation.

Similarly foreclosed are invocations of "local control." As our Supreme Court noted, "[t]he relationship of school funding and local control is often cited by defenders of hybrid school funding schemes that result in significant district-by-district disparities." *William Penn Sch. Dist.*, 170 A.3d at 442, n.40. But the Supreme Court, along with numerous other states' highest courts, have made clear that a legislature may not "use the flexibility of means granted by the constitution to avoid the certainty of responsibility." *Tenn. Small Sch. Sys. v. McWherter*, 851 S.W.2d 139, 151 (Tenn. 1993).

Indeed, the Supreme Court's dismissal of this argument in this case — calling it "tendentious," condemning it as "typically conclusory in its presentation," and emphasizing that school funding disparities actually *harm* local control in practice — was a prescient observation for the actual evidence put forward four years later. *William Penn Sch. Dist.*, 170 A.3d at 442, n.40.

For instance, Speaker Cutler himself admitted that "[a] number of low-wealth school districts don't have meaningful control over the total amount of funding they can raise," with "many low-wealth school districts" lacking "the capacity to raise substantially more money locally even if those school districts believe additional funding was necessary to improve the education they provide their students." PX-3215, Resp. Nos. 7-8; FOF ¶¶ 388-389. And the Speaker's own witness stated the obvious: additional school funding may actually *increase* local control. FOF ¶ 604.

But even without this evidence, the Supreme Court has made plain that "recitations of the need for local control cannot relieve the General Assembly of its exclusive obligation under the Education Clause." *William Penn Sch. Dist.*, 170 A.3d at 442, n.40. Legislatures "may delegate, but they may not abdicate, their

constitutional duty." *McDuffy v. Sec'y of Exec. Off. of Educ.*, 615 N.E.2d 516, 550 (Mass. 1993). Courts across the nation are in accord.[16]

c) The state may not blame districts for a funding system's failures.

Likewise precluded are Respondents' attempts to blame school districts for their own plight, by arguing that districts are spending money in ways the state deems inappropriate. If schoolchildren are not receiving the education the Constitution demands, "the General Assembly alone must be held accountable, regardless of whether one perceives the cause of the actionable deficiency to exist at the local or state level." *William Penn Sch. Dist.*, 170 A.3d at 442 n.40.[17] To the

---

[16] *See DeRolph v. State*, 677 N.E.2d 733, 745 (Ohio 1997) ("Furthermore, rather than following the constitutional dictate that it is the *state's* obligation to fund education (as this opinion has repeatedly underscored), the legislature has thrust the majority of responsibility upon local school districts. This, too, is contrary to the clear wording of our Constitution."); *Campbell Cnty.*, 907 P.2d at 1270 ("Legal commentators have noted local control is generally treated as a self-evident concept and there often is a failure to address its meaning or the values it is intended to serve."); *Tenn. Small Sch. Sys.*, 851 S.W.2d at 154-55 ("There is an even more serious flaw in the defendants' argument that local control justifies disparities in opportunity. There has been no showing that a discriminatory funding scheme is necessary to local control."); *Dupree*, 651 S.W.2d at 93 ("Far from being necessary to promote local fiscal choice, the present system actually deprives the less wealthy districts of the option.") (quotation omitted).

[17] Courts around the country are in agreement on this point as well. *See, e.g.*, *Maisto*, 196 A.D. 3d at 112 ("Proof that a school district or its board of education has mismanaged its resources is no defense to an otherwise established Education Article claim, as school districts are agents of defendant."); *Martinez*, 2018 WL 9489378, at *21 n.33 ("The defense attempts to cast blame on the districts, even if accurate, would not absolve the State from responsibility. The State of New Mexico is the defendant . . . The State is responsible for assuring that students receive an adequate education. This responsibility extends to assuring at all its political subdivisions are meeting this constitutional goal."); *Campaign for Fiscal Equity, Inc.*, 801 N.E.2d at 343 ("[T]he State remains responsible when the failures of its agents sabotage the measures by which it secures for its citizens their constitutionally-mandated rights."); *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 211 (Ky. 1989) ("The sole responsibility for providing the system of common schools is that of our General Assembly."); *Robinson v. Cahill*, 303 A.2d 273, 294 (N.J.

extent the General Assembly disapproves of a school district's choices, they may decide that the solution is *less local control* and elect to impose their beliefs on districts, which are "but agencies of the state Legislature to administer this constitutional duty." *Smith v. Sch. Dist. of Upper Darby Twp.*, 130 A.2d 661, 667 (1957) (quotation omitted). But they are not excused from liability by pointing the finger at districts.

Moreover, Respondents have failed to adduce any evidence of inappropriate spending trends. Instead, they point to examples that are contradicted by their own laws, reports, and admissions. For example, Legislative Respondents suggest that the reason districts are unable to adequately educate their students is because they are wasting their money on so-called "non-instructional supports." LR FOF/COL ¶ 2176. In other words, they take the position that schools that provide extracurricular activities (which Senator Corman admits "play an essential role in children's mental health and well-being," FOF ¶ 835 (quotation omitted)), school counselors (which Legislative Respondents' witness admits improve academic performance and classroom behavior, and lessen student depression, FOF ¶ 686) or truancy staff (which Legislative Respondents mandate by law, 24 Pa. Stat. § 13-

1973) ("Whether the State acts directly or imposed the role upon local government, the end product must be what the constitution commands. A system of instruction in any district of the State which is not thorough and efficient falls short of the constitutional command. . . . [T]he obligation is the State's to rectify it.").

1341, and which PDE admits are particularly important for children in poverty, FOF ¶ 708) are squandering funds. *See* LR FOF/COL ¶¶ 549, 562, 733, 2176-2185.

The audacity of this argument is exemplified by Legislative Respondents' request that this Court declare that even *school psychologists* are a non-mandated luxury. LR FOF/COL ¶ 2176. However, as witnesses explained at trial, school psychologists spend most of their time identifying and evaluating children with disabilities. *See, e.g.*, FOF ¶¶ 688, 694-695. Setting aside the implication that a system that allows children to languish undiagnosed and uneducated could be constitutionally compliant, Legislative Respondents' position also ignores the fact that educating children with disabilities is mandated by law. *See, e.g.*, 24 Pa. Stat. § 13-1372; 20 U.S.C. § 1400, et. seq. And so is the use of school psychologists as part of the identification and evaluation process. *See, e.g.*, 22 Pa. Code § 14.123 ("The group of qualified professionals, which reviews the evaluation materials to determine whether the child is a child with a disability . . . shall include a certified school psychologist . . . ."). In other words, Legislative Respondents criticize districts for expending funds to educate children with disabilities in accordance with Legislative Respondents' own legal requirements.

Legislative Respondents' other assertions of allegedly wasteful spending are similarly meritless. For example, Legislative Respondents ask this Court to find

that "Greater Johnstown recently purchased over 300 WiFi hotspots — not to be used in its schools, but instead to be installed in its students' households." LR FOF/COL ¶ 2191. But the reason devices were purchased "not to be used in its schools" was because schools were shuttered by a once-in-a-century public health emergency. Legislative Respondents leave unsaid how children were supposed to learn otherwise, or why money allocated for mitigating the impact of the pandemic was improperly spent mitigating the impact of the pandemic.

In a similar vein, Legislative Respondents ask this Court to deem it wasteful for Panther Valley to spend money (by using COVID funding to temporarily add courses for students to take, FOF ¶ 747), and for Shenandoah Valley to temporarily save money (so that it may replace a boiler that is well past its projected shelf life, FOF ¶ 576). *See* LR FOF/COL ¶ 2344(c)-(d). Putting aside the inconsistency of this argument, no one seriously disputes "the importance of a predictable stream of education funding for any school district," *Abbott v. Burke*, 20 A.3d 1018, 1042 (N.J. 2011), including Respondents, who warned school districts about the perils of one-time funding, FOF § XI(C). Until Respondents provide adequate, recurring, and predictable support, Petitioners will continue to be faced with impossible choices.

ii. The state may not blame poverty for the system's failures.

Attempts to shift blame more broadly towards poverty or other societal ills fare no better. For instance, Legislative Respondents argue that "social, economic, and personal disadvantages of students may hinder educational outcomes," and that therefore Respondents should not be held responsible for failing to provide these "students with access to specialized resources," even if those specialized resources would improve educational outcomes. LR FOF/COL ¶ 2427. In other words, Legislative Respondents believe that rather than lifting its future citizens to self-sufficiency, a constitutionally compliant education system can perpetuate those disparities and ultimately, allow them to compound.

Courts across the country have rejected similar arguments, acknowledging that "[c]hildren with an impaired readiness to learn do not have the same equal opportunity for a quality education as do those children not impacted by personal or social ills simply because they do not have the same starting point in learning." *Campbell Cnty. Sch. Dist.*, 907 P.2d at 1278-79. But those different starting points are the very reason for robust public education, not an excuse to short-change it.

In other words, it is "not a sufficient answer to this systemic problem of poor outcomes by at-risk students to urge, as Defendants do, that the problems are caused by socio-economic factors not attributable to the school system." *Martinez*, 2018 WL 9489378, at *19. And just like Respondents themselves, courts

"acknowledge that some subgroups can have their own special challenges to achievement." *Gannon*, 390 P.3d at 497. But in a modern educational system, "their particular hurdles do not satisfactorily explain why" so many of those students cannot reach proficiency. *Id; accord Hoke Cnty. Bd. of Educ.*, 599 S.E.2d at 389-90. Put simply, in the modern world, courts "cannot accept the premise that children come to . . . schools ineducable, unfit to learn." *Campaign for Fiscal Equity, Inc.*, 801 N.E.2d at 341.[18]

iii. The state is not entitled to decide who becomes a college graduate and who becomes a service worker.

Similarly baseless is Legislative Respondents' cynical and troubling assertion that Pennsylvania need not actually provide the same high-quality education to all students because the Pennsylvania economy needs low-skilled workers.

From declaring that the need for pizza makers obviates the need for the critical thinking skills required by state academic standards, FOF ¶¶ 214-215, to the suggestion that marginal academic performance may be sufficient, "especially

[18] Legislative Respondents' argument that other parts of government are better suited to lessen the burden that schools face is likewise misguided. LR FOF/COL ¶¶ 2175, 2433. The General Assembly is free to implement other programs. But until they do, they may not rely on the theoretical possibility of doing so to obscure the actual constitutional test here: whether the system as constructed — for actual Pennsylvania children, in actual conditions — provides the resources necessary to allow all children the tools they need to become college-and-career ready citizens. *See Campaign for Fiscal Equity, Inc.*, 801 N.E.2d at 341 (rejecting the proffered justification that "a dollar spent on improving 'dysfunctional homes' would go further than one spent on a decent education").

for students from an impoverished background or with learning disabilities who are behind level before they even set foot in the public school system," Tr. 15038:22-15039:3 (Cutler closing), Legislative Respondents offer a Dickensian standard: that a system where kindergarten achievement gaps persist in perpetuity, hundreds of thousands of children fail, and those hundreds of thousands of children are overwhelmingly concentrated in Pennsylvania's low-income, Black, and Latino communities, is constitutionally adequate so long as Pennsylvania ends up with an adequate number of high-skilled workers. It is not.

Citizens are not defined solely by their employment prospects. The ability to critically read a novel, a news story, or a political candidate's platform; to conduct foundational math; and to understand the basic biology necessary to decide whether to receive a vaccine, are critical to a well-functioning citizenship, and essential parts of the modern education to which every child is entitled. FOF ¶¶ 216-217. A four-year postsecondary degree is certainly not the only way of succeeding in the world. Students may end up with college degrees, industry-based certificates, in military service, or on any other particular journey. But those choices — including who goes to college versus who takes the "McDonald's track" — do not belong to the General Assembly. They belong to the students of Pennsylvania, no matter the wealth of the community they are born into, or the color of their skin.

iv. National comparisons do not demonstrate whether Pennsylvania's system is adequately funded.

The Commonwealth also may not rely on comparisons to national spending patterns to defend the adequacy of their funding system. For example, PDE readily admits that Pennsylvania "has significant financial inequities in its system of school funding, with one of the largest gaps of any state in the country in per child spending between the commonwealth's poorest and wealthiest districts." FOF ¶ 308 (quotation omitted). Legislative Respondents, however, initially suggested that Petitioners and PDE had it wrong, and presented expert witnesses claiming that in Pennsylvania, poor districts actually have more funding. *See* FOF § XII(B)(3). Having now abandoned that position all together, Legislative Respondents make a much more rudimentary argument: because the Commonwealth spends over $13 billion on education, LR FOF/COL ¶ 2206, or because Pennsylvania spends more than the national average, including so-called "peers" such as Arkansas and Texas, LR FOF/COL ¶¶ 224-225, the system passes constitutional muster.

To start, "[i]t is not really surprising that" Pennsylvania "(or any state) spends almost half of its budget on education. As the old saw goes, State and local governments . . . are basically school districts with police departments." *Martinez*, 2018 WL 9489378, at *2 n.4 (quotations and citation omitted). It appears, however, that Legislative Respondents' "premise is that some expenditure level, if high enough relative to figures nationwide, simply must be 'enough,' without

reference to student need, local costs, and the actual quality of inputs and outputs." *Campaign for Fiscal Equity, Inc.*, 801 N.E.2d at 341-42.

This argument has been correctly rejected by courts. Putting aside the reliability concerns of the Census data upon which the claim relies, and the many problems created by the assumption that a dollar spent in Pennsylvania is the same as a dollar spent in Arkansas, or that a dollar spent in New York is the same as a dollar spent in Utah, FOF ¶ 1109, Legislative Respondents' argument fails for a simpler reason: they have not explained which, if any, of those states are providing an education that meets the requirements of the Pennsylvania constitution, and which are not. *Campaign for Fiscal Equity, Inc.*, 801 N.E.2d at 342 (rejecting a national spending comparison because "the record discloses no information on whether those students are receiving a sound basic education.").[19]

* * *

Respondents request that this Court ignore their legislation, their standards, their assessments, their public statements, and their witnesses, so that they can

[19] Courts have rejected national test score data for similar reasons. *See Gannon*, 390 P.3d at 498 (acknowledging that Kansas students scored as high as 5th on the NAEP but noting that the "NAEP is not a Kansas-created achievement test" and that "that achievement gaps for subgroups appearing in the results of K-12 [Kansas] testing in any given year . . . also appear in the NAEP results."); *Campaign for Fiscal Equity, Inc.*, 801 N.E.2d at 338 ("We reject this exclusive focus on national comparisons because the record provides no information on how many students receive a sound basic education nationwide.").

blame someone else for Pennsylvania's constitutional failure. All of this obfuscates the most fundamental point: there are basic educational strategies and resources school districts need to employ to make opportunity meaningful for children, which will allow far more of them to graduate as capable, self-sufficient citizens. But in violation of the Constitution, the General Assembly has failed to provide the funding necessary to enable all children to succeed.

D. FRAMEWORK FOR EVALUATING PETITIONERS' EQUAL PROTECTION CLAIM

Pennsylvania's equal protection provision — Article III, Section 32 of the Pennsylvania Constitution — "embodies the principle that like persons in like circumstances should be treated similarly by the sovereign." *William Penn Sch. Dist.*, 170 A.3d at 458 (quotation omitted). "It is the nub of equal protection that the Commonwealth cannot give or take from one and not the other unless their reason is to advance or protect a constitutionally recognizable interest of the common weal." *Fischer v. Dep't of Pub. Welfare*, 502 A.2d 114, 121 (Pa. 1985). Pursuant to Article III, Section 32, Petitioners claim that Pennsylvania's funding scheme discriminates against students in low-wealth districts by creating resource disparities that deprive these students of an equal opportunity to receive the high-quality education to which they are entitled. *See William Penn Sch. Dist.*, 170 A.3d at 464 (recognizing that the question before the Court is whether "the General Assembly "imposes a classification whereunder distribution of state funds results

in widespread deprivations in economically disadvantaged districts of the resources necessary to attain a constitutionally adequate education.").

The level of judicial review applicable to this claim is determined by the governmental classification or type of right involved:

> The first type — classifications implicating neither suspect classes nor fundamental rights — will be sustained if it meets a rational basis test. In the second type of case, where a suspect classification has been made or a fundamental right has been burdened, another standard of review is applied: that of strict scrutiny. Finally, in the third type of cases, if important, though not fundamental rights are affected by the classification, or if sensitive classifications have been made, . . . an intermediate standard of review, or a heightened standard of review [is applied].

William Penn Sch. Dist., 170 A.3d at 458 (quotation omitted).

Therefore, to evaluate Petitioners' equal protection claim, the Court must first determine the type of right affected by Respondents' unequal treatment of Petitioners, and then apply the requisite level of scrutiny. *Fischer*, 502 A.2d at 122. As set forth below, education is a fundamental right under the Pennsylvania Constitution, and therefore "trigger[s] strict scrutiny of the disadvantageous classification reflected in the disparity of educational resources at the disposal of low and high-wealth districts." *William Penn Sch. Dist.*, 170 A.3d at 431.

1. Education is a fundamental right under the Pennsylvania Constitution.

"[F]undamental rights, are those which have their source, explicitly or implicitly, in the Constitution." *Smith v. City of Phila.*, 516 A.2d 306, 311 (Pa.

1986); *see also Zauflik v. Pennsbury Sch. Dist.*, 104 A.3d 1096, 1118 (Pa. 2014). Although no right to education has been recognized under federal equal protection principles due to the U.S. Constitution's "conspicuous and complete silence" on education, the Pennsylvania Constitution "is not at all silent on the topic" and in fact bestows an explicit right to a "thorough and efficient" education in Article III, Section 14. *William Penn Sch. Dist.*, 170 A.3d at 460 (referencing *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973)).

In order to determine whether "the Pennsylvania Constitution affords broader protections than its federal counterpart," the Court should consider the four factors set forth in *Commonwealth v. Edmunds*, 586 A.2d 887 (Pa. 1991), the Supreme Court's "seminal opinion" on the question. *Commonwealth v. Baker*, 78 A.3d 1044, 1054, n.3 (Pa. 2013) (citing *Edmunds*, 586 A.2d 887 (Pa. 1991)); *see also Zauflik*, 104 A.3d at 1117 n.10. The four factors are "(1) the text of the Pennsylvania constitutional provision; (2) the history of the provision, including Pennsylvania case law; (3) relevant case law from other jurisdictions; and (4) policy considerations, including unique issues of state and local concern, and applicability within modern Pennsylvania jurisprudence." *Commonwealth v. Arter*, 151 A.3d 149, 156 (Pa. 2016) (citing *Edmunds*, 586 A.2d at 895).[20]

[20] The Supreme Court has endorsed the use of the *Edmunds* factors when "a party mounts an individual rights challenge under the Pennsylvania Constitution." *DePaul v. Commonwealth*, 969 A.2d 536, 541-42 (Pa. 2009). And where the challenge "specifically implicates a distinct

An examination of these factors demonstrates that the Pennsylvania Constitution confers a fundamental right to obtain a high-quality, contemporary education.

i. The right to a high-quality, contemporary education is explicitly and implicitly guaranteed by the text of the Pennsylvania Constitution.

The text of the Pennsylvania Constitution makes clear that, as has already been recognized by the Pennsylvania Supreme Court in *dictum*, "public education in Pennsylvania is a fundamental right." *Sch. Dist. of Wilkinsburg v. Wilkinsburg Educ. Ass'n*, 667 A.2d 5, 9 (Pa. 1995).

As explained above, through its Education Clause, the Pennsylvania Constitution has long imposed an explicit mandate on the General Assembly to provide all children with a "thorough and efficient" system of public education. *See supra* Section VI(A)(1)-(2). The Constitution also treats education as a foundational right by including it in the general appropriations bill alongside basic government functions, and by making the Secretary of Education the only constitutionally prescribed executive officer who is not subject to election. *Id.*; *see*

---

provision of the Pennsylvania Constitution" — here, the Education Clause — the Court should also "consider the textual distinctions between the state and federal provisions, the historical interpretation of the provision as elucidated in legislation and case law, related decisions of our sister states, and policy considerations unique to this Commonwealth." *Commonwealth v. Means*, 773 A.2d 143, 147 (Pa. 2001). The Supreme Court has also endorsed the use of *Edmunds*' straightforward framework when examining provisions of the Pennsylvania Constitution that have no federal analog. *See League of Women Voters v. Commonwealth*, 178 A.3d 737, 803 (Pa. 2018); *Robinson Twp. v. Commonwealth*, 83 A.3d 901, 944 (Pa. 2013).

also FOF §§ III(A)(2)-(3). Together, these provisions guarantee every child in the Commonwealth an absolute right to a high-quality, contemporary education.[21]

ii. The history of the Education Clause and relevant Pennsylvania case law underscore the Commonwealth's constitutional commitment to education.

The history surrounding the development of the Education Clause underscores the fact that education has been of the utmost concern to the Commonwealth since its founding, and that, at least since the 1873 Convention, it has been heralded as a "great fundamental right." Pennsylvania Debates of 1873, Vol. 3:345; *see also* FOF § III(A)(1). The 1873 Convention delegates repeatedly stressed the importance of establishing a right to education in the Constitution, declaring, "[i]f there is any duty more incumbent upon the whole people of this

[21] Legislative Respondents argue that the Education Clause does not confer an individual right to an education of any level or quality. LR FOF/COL ¶ 2446. This claim is meritless. "[W]here a specific duty is assigned by law, and individual rights depend upon the performance of that duty, it seems equally clear that the individual who considers himself injured, has a right to resort to the laws of his country for a remedy." *Marbury v. Madison*, 5 U.S. 137, 166 (1803). "[C]onsistent with the intuition that to disregard the beneficiaries of a mandate is to render that mandate little more than a hortatory slogan," *William Penn Sch. Dist.*, 170 A.3d. at 461 n.68, Pennsylvania courts have long recognized that the education system mandated by the Constitution bestows a corresponding right: in other words, "[t]he schools are for the students. It is their welfare that the Constitution aims to promote by the 'thorough and efficient system of public schools.'" *Kaplan v. Sch. Dist. of Phila.*, 113 A.2d 164, 166 (Pa. Super. Ct. 1955); *see also Sch. Dist. of Phila.*, 447 A.2d at 224 ("[T]he maintenance of a public school system is primarily for the education and training of our youth . . . ."); *Walker v. Sch. Dist. of City of Scranton*, 12 A.2d 46, 48 (Pa. 1940) ("The aim and object of our school system is to provide the best education for the children of the Commonwealth."); *Walker v. Ball*, 2 A.2d 770, 772 (Pa. 1938) (same); *Commw. ex rel. Hetrick*, 6 A.2d at 281 (same); *see also* May 13, 2022 Brief of Amici Curiae Law Professors 4.

Commonwealth than any other, it is to see that every child of the Commonwealth shall be educated and taken care of." Pennsylvania Debates of 1873, Vol. 7:691-92; *see also, e.g.*, *id.* Vol. 2:472 ("it is the duty of the State, as a matter of justice and self-preservation, that every child in the Commonwealth should be properly educated and trained for the high and responsible duties of citizenship."). Indeed, the framers saw the right to an education as essential to the continued existence of the Commonwealth itself, repeatedly emphasizing that "the safety of the State and the safety of the government depends upon the education of all the children. . . . if we would preserve our present form of government, it is absolutely necessary that all the children in the Commonwealth . . . should be educated." *Id.* Vol. 6:64; *see also id.* Vol. 2:421 ("If we are all agreed upon any one thing it is, that the perpetuity of free institutions rests, in a large degree, upon the intelligence of the people, and that intelligence is to be secured by education."); *id.* Vol. 6:45 ("In the uneducated ballot is found the nation's greatest danger; but the educated ballot is the nation's main tower of strength.").

For more than a century, Pennsylvania courts have endorsed this view, regarding the state's system of public education as "one of the bulwarks of democratic government" and repeatedly affirming the view that "[d]emocracy depends for its very existence upon the enlightened intelligence of its citizens and electors." *Teachers' Tenure Act Case*, 197 A. at 352; *see also*, *e.g.*, *Appeal of*

Albert, 92 A.2d 663, 665 (Pa. 1952) (describing education as the "most vital feature of our governmental and democratic system"); *Bovino v. Bd. of Sch. Dirs. Of the Ind. Area Sch. Dist.*, 377 A.2d 1284, 1289 (Pa. Commw. Ct. 1977) ("Certainly it can be conceded that our public school system is a most vital feature of our governmental and democratic system."); *William Penn Sch. Dist.*, 170 A.3d at 424 (noting that the delegates that authored the Education Clause "linked the importance of public education to the success of democracy.").

Legislative Respondents ignore this case law and instead ask the Court to rely on Judge Pellegrini's unpublished opinion in *PARSS v. Ridge,* 1998 Pa. Commw. Unpub. LEXIS 1 (Pa. Cmmw. July 9, 1998), for the proposition that education is not a fundamental right. LR FOF/COL ¶ 2447. This would be error. First, *PARSS* relied on the now abrogated precedent of *Danson*, and expressed a concern that if there were a right to education, there could be an "extension of this rationale to other governmental services." *PARSS*, 1998 Pa. Commw. Unpub. LEXIS at *140-141, and n.72-73. But the Supreme Court has deemed *Danson* "a case that defies confident interpretation" and overturned it. *William Penn Sch. Dist.*, 170 A.3d at 441, 464. The Supreme Court also rejected the equal protection rationale of *PARSS*, and instead held that the level of judicial oversight should reflect "the priority" of education in the Constitution and "the constitutional

imperative, ensuring that non-constitutional considerations never prevail over that mandate." *William Penn Sch. Dist.*, 170 A.3d at 464.

iii. Other states have deemed education a fundamental right pursuant to education mandates similar to Pennsylvania's Education Clause.

A review of case law from other jurisdictions confirms that various states have deemed education a fundamental right pursuant to education mandates that contain similar standards to that of Pennsylvania. *See Skeen v. State*, 505 N.W.2d 299, 309, 313 (Minn. 1993) ("[E]ducation *is* a fundamental right under the state constitution, not only because of its overall importance to the state but also because of the explicit language used to describe this constitutional mandate.")[22]; *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 200, 206, 212 (Ky. 1989) (A "child's right to an adequate education is a fundamental one under our Constitution," as the "framers of [the Education Clause] emphasized that education is essential to the welfare of the citizens of the Commonwealth."); *Washakie Cnty. Sch. Dist. No. One v. Herschler*, 606 P.2d 310, 320-21, 333 (Wyo. 1980); *Pauley*, 255 S.E.2d at 878 ("Certainly, the mandatory requirement of 'a thorough and

[22] The Minnesota Supreme Court clarified that the "fundamental right recognized in *Skeen* was not merely a right to anything that might be labeled as 'education,' but rather, a right to a general and uniform system of education that is thorough and efficient, that is supported by sufficient and uniform funding, and that provides an adequate education to all students in Minnesota." *Cruz-Guzman v. State*, 916 N.W.2d 1, 11 (Minn. 2018).

efficient system of free schools,' found in . . . our Constitution, demonstrates that education is a fundamental constitutional right in this State.").

Several other states have recognized education as a fundamental right under their constitutions. *See, e.g.*, *Martinez*, 2018 WL 9489378, at *25; *Leandro v. State*, 488 S.E.2d at 255; *Claremont Sch. Dist. v. Governor*, 703 A.2d 1353, 1358 (N.H. 1997); *Serrano v. Priest*, 487 P.2d 1241, 1248, 1258 (Cal. 1971). As one court reflected, this is for good reason, as these "State Constitution[s] specifically charge[] the legislature with the duty to provide public education" and "even a minimalist view of educational adequacy recognizes the role of education in preparing citizens to participate in the exercise of voting and first amendment rights." *Claremont Sch. Dist.*, 703 A.2d at 1358-59. These precedents, which are "instructive, fully applicable here, and highly persuasive," *see* Law Professors Amicus Brief 6-13, weigh strongly in favor of a determination that education is a fundamental right in the state of Pennsylvania as well.

iv. Policy considerations underscore education's foundational importance to the existence of the Commonwealth.

An examination of the relevant policy considerations also point in the same direction: "from the beginning the policy of the state was to educate all the children of the state." *In re Walker*, 36 A. at 149.

The Commonwealth has clearly and repeatedly recognized both an individual and a societal interest in providing a comprehensive and effective system of public education to its citizens, based on the view that "[e]ducation is key to ensuring a vibrant future not only for our students, but for the Commonwealth as a whole." Tr. 1791:9-14 (Stem); PX-1830-18. As set forth in detail in Petitioners' Findings of Fact, the provision of education has a significant impact on both the well-being of Pennsylvania's citizens and their system of government. *See* FOF § III(C).

For example, Respondents' and Petitioners' witnesses all acknowledged at trial that education is essential to meeting "the needs of the Commonwealth in supporting workforce and economic competitiveness" and "critical to the maintenance of a strong democracy." FOF ¶ 188. As Petitioners demonstrated, education also has a profound impact on the individuals who receive it and the state and local communities that are sustained by it. Increased education correlates with higher earnings, greater tax contributions, and less reliance on public benefits, as well as improved health and safety; and conversely, a system that fails to adequately educate all its students forfeits those benefits at an enormous cost. *See* FOF ¶¶ 188-197.

2. Petitioners' equal protection claim is entitled to strict scrutiny, under which Respondents bear the burden of justifying their disparate treatment of students in low-wealth districts.

Because Petitioners' equal protection claim involves a fundamental right, it requires the application of strict scrutiny. This level of scrutiny requires the Court to determine whether Respondents have proven that the Pennsylvania school funding system's discrimination against low-wealth districts is "necessary to advance a compelling state interest." *William Penn Sch. Dist.* 170 A.3d at 458; *see, e.g.*, *Claremont Sch. Dist.*, 703 A.2d at 1358-59 ("the governmental action or lack of action that is the root cause of the disparity will be examined by a standard of strict judicial scrutiny."). Under a strict scrutiny analysis, it is Respondents' burden of proof to show that the wealth-based disparities created by the school funding system are constitutionally justifiable. *William Penn Sch. Dist.*, 170 A.3d at 458. If Respondents cannot meet their burden, Petitioners are entitled to relief.

3. As conceded by Respondents, education is at least an important right.

Even if education were not a fundamental right in Pennsylvania — and it demonstrably is — education is, at a minimum, an important right warranting intermediate scrutiny. "Those rights which have been considered important enough to warrant this heightened scrutiny have been described as those affecting liberty interests, or a denial of a benefit *vital* to the individual." *Fischer v. Dep't of Pub.*

Welfare, 502 A.2d 114, 122 (Pa. 1985) (internal quotations omitted and emphasis added).

As set forth above, even before Pennsylvania mandated the provision of education in 1874, the "Constitutions of 1776, 1790 and 1838, and the laws recognized [education's] *vitally important* part in our existence." *Wilson v. Sch. Dist. of Phila.*, 195 A. 90, 94 (Pa. 1937) (emphasis added). And as reflected in the Education Clause's origins, *supra* Section VI(A)(2), the right to a high-quality education was borne of the deeply held and oft-repeated belief that "[t]he most important interest requiring attention in our State is unquestionably that of education." Pennsylvania Debates of 1873, Vol. 2:389; *see id.* Vol. 2:421 ("The section on education is second in importance to no other section to be submitted to this Convention."); *id.* Vol. 7:678 (calling education the "most important of all the interests of the State."). Indeed, every party in this case has repeatedly affirmed that "[e]ducation is extremely important." Tr. 159:21-23 (Corman opening); Tr. 14889:18-19 (Corman closing); Tr. 113:13-15 (Cutler opening); Tr. 14992:16-18 (Cutler closing); Tr. 61:10-13 (Executive Respondents opening); Tr. 14838:2-8 (Executive Respondents closing).

If the Court determines that education is an important right, Petitioners are entitled to intermediate scrutiny, which requires Respondents to prove that the disparate treatment embedded in their funding scheme is "substantially related" to

the system's "purpose" under intermediate scrutiny. *Yanakos v. UPMC*, 218 A.3d 1214, 1225-26 (Pa. 2019). While Respondents can rely on a variety of means to meet this burden, "mere anecdote and supposition" will not do. *Id.* (quotation omitted).

E. RESPONDENTS HAVE VIOLATED PETITIONERS' RIGHT TO EQUAL PROTECTION OF THE LAW

A high-quality education is the engine of democracy, the gatekeeper to self-sufficiency, and a fundamental right under the Pennsylvania Constitution. The evidence adduced at trial demonstrates that the General Assembly has adopted a school funding system that impermissibly impinges upon this fundamental right, creating widespread resource inequality and depriving students in low-wealth districts of their entitlement to a high-quality education. This disparate treatment is a clear denial of equal protection under Article III, Section 32.

In response, Respondents have failed to adduce any legitimate evidence that the funding system's discrimination against students in low-wealth districts is "necessary to advance a compelling state interest," as they must to justify the impairment of a fundamental right. *William Penn Sch. Dist.* 170 A.3d at 458. And despite the fact that Respondents have repeatedly conceded education's importance, they have also failed to put forward any evidence demonstrating that the disparities created by the Commonwealth's school finance scheme are "substantially related to its purpose," as required when an important right is at

issue. *Yanakos*, 218 A.3d at 1225-26. Instead, Respondents have admitted that their funding scheme does not even attempt to assess the amount of funds necessary to meet the needs of students in low-wealth districts, and have recycled excuses that have already been rejected by the Pennsylvania Supreme Court.

Respondents have offered no defensible evidence because there is no justification for an education funding scheme that does not even bear a rational relationship to the educational needs of students. Pennsylvania's school funding system violates equal protection even under even the lowest standard of review.

1. Petitioners have proven that the current funding system discriminates against children in low-wealth districts, denying them an equal opportunity to obtain a high-quality, contemporary education.

As set forth in Petitioners' Findings of Fact and *supra* Section VI(C), Petitioners have demonstrated that Pennsylvania's school funding system provides low-wealth districts and their high-need students with fewer resources than higher wealth districts and their lower-need students. The critical features of this system include a high dependence on local income and property taxes, *see* FOF § VI(A); inadequate levels of state funding, *see* FOF § VI(E); and regressive and illogical methods of distributing funding that are disconnected from educational need, *see* FOF § VI(F). By adopting this scheme, the General Assembly has created a system in which children educated in low-wealth districts, including in Petitioner Districts

and the School District of Philadelphia, are treated in radically different — and adverse — ways from their peers in affluent districts.

For example, as already noted, *supra* Section (VI)(C)(2), low-wealth districts have vastly lower revenues — almost $8,000 less per need-adjusted student — than high-wealth districts. FOF ¶ 329. As PDE has acknowledged, Pennsylvania also has "one of the largest gaps of any state in the country in [non-adjusted] per-child spending between the commonwealth's poorest and wealthiest districts." PX-1830-93. And because they have the greatest percentage of high-need students, FOF ¶¶ 326-327, low-wealth districts are also disproportionately harmed by the impact of Hold Harmless, which prevents the vast majority of Basic Education Funding and Special Education Funding from being distributed according to student need. FOF § VI(F)(1). Low-wealth districts are also overwhelmingly more likely to be underfunded: the poorest quintile of districts have an adequacy shortfall of over $2.04 billion, or more than 11 times the adequacy shortfall in the wealthiest quintile. *See* FOF § VII(B). And as a direct result of their low wealth, these districts are least able to mitigate shortfalls in state funding by raising local revenue, despite taxing themselves at significantly higher rates than high-wealth communities. *See* FOF § VI(D).

The experiences of Petitioner Districts and the School District of Philadelphia illustrate the compounding impact of these dynamics on their schools

and the schools in many other low-wealth, high-need, high-tax, low-spending districts throughout the Commonwealth. *See* FOF §§ VII, VIII. The result of these chronic and pervasive deprivations are circumstances like the ones in Panther Valley, where as superintendent Mr. McAndrew testified, "We make . . . decisions knowing that's not in the best interest of students, but knowing that we have no other options at this point." Tr. 262:6-11 (McAndrew). These districts "have no other options" because, as simply put by Greater Johnstown superintendent Dr. Amy Arcurio, "[W]e just don't have enough resources. We don't have enough money to meet the challenges that our students have." Tr. 2568:7-14 (Arcurio). Instead, teachers and administrators are forced to constantly reshuffle priorities in an attempt to "divide the resources adequately among various groups of students. And unfortunately, when we divide those resources, there aren't enough to go around[.]" Tr. 2568:17-2569:9 (Arcurio); *see* FOF ¶ 11.

As a result of these financial inequities, children in low-wealth school districts, including Petitioner Districts and the School District of Philadelphia, are denied the educational resources they need to become college-and-career-ready citizens, while children in high-wealth districts receive sufficient resources. *See* FOF § IX. At trial, district officials, administrators, and teachers testified repeatedly about the ways in which low-wealth school districts in particular are deprived of the basics: sufficient numbers of qualified teachers, staff, and

administrators, reasonable class sizes, habitable facilities, and functional technology. *See* FOF §§ VIII, IX. By contrast, students in high-wealth districts like Springfield Township are simply provided with what they need to learn, even — and in fact, especially — if they require additional supports to succeed. *See* FOF § IX(C).

These gaping disparities in resources result in profound, disproportionate rates of failure among low-wealth districts. For example, according to Dr. Kelly's analysis, students in the lowest wealth districts score on average 31 percentage points lower on the mathematics and algebra portion of the state's PSSAs and Keystones than students in the highest wealth districts, 24 percentage points lower in science and biology, and 28 percentage points lower in English language/literature. *See* FOF ¶ 867. Moreover, students in the poorest quintile of districts are graduating at a rate almost 10 points lower than students in the wealthiest quintile of districts, and students that drop out of school are disproportionately concentrated in the lowest wealth districts. FOF ¶ 891. And according to Petitioner's expert, Dr. Johnson, students in Pennsylvania's most affluent districts are performing two to three grade levels above students in lower income, more disadvantaged districts. FOF ¶ 868.

Dr. Kelly's analysis of economically disadvantaged students' performance provides a particularly stark illustration of the relationship between achievement

and district wealth under the current funding system. As Dr. Kelly demonstrated, a student from a low-income family in Pennsylvania that attends school in one of the wealthiest districts is, on average, significantly more likely to reach state standards than similarly low-income students attending school in one of the poorest quintile districts, and is far more likely to attend and complete college. *See* FOF ¶¶ 937-943.

These statewide disparities are glaringly apparent in the achievement scores and graduation rates of Petitioner Districts and Philadelphia. *See* FOF ¶¶ 863-890. And the district-level data underscores the fact that these gaps are not merely a difference between acceptable and exceptional. Petitioner Districts' high school and college graduation rates systematically fall below an already low statewide average. FOF ¶¶ 890, 904. Petitioners also trail far behind the state average in assessment scores, often by thirty percentage points or more, and sometimes nearly fifty percentage points behind the average performance of districts in the wealthiest quintiles. FOF ¶¶ 870-873. For example, at Philadelphia's Overbook High School, only 6% of students test proficient in literature. Tr. 7875:3-11 (Hite); PX-2850-1. Just three miles away, at affluent Lower Merion High School, that number is 95%. Tr. 7875:3-11 (Hite); PX-2246-1; *see* FOF ¶ 33. Far smaller gaps have been deemed probative of a system's failure. *See Hoke Cnty. Bd. of Educ.*, 599 S.E.2d at 383.

Together, this evidence demonstrates that under the Commonwealth's current funding system, a child's ability to obtain a constitutionally adequate education is directly linked to the wealth of the community in which she resides. This constitutes a clear denial of equal protection of the law. The "opportunity of an education . . . , where the state has undertaken to provide it, is a right which must be made available to all on equal terms." *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954). Pursuant to both the Pennsylvania Constitution and Pennsylvania's academic standards, *this* state has "undertaken to provide" a high-quality, contemporary system of education, and thus an education that meets that standard must be provided "to all on equal terms." *Id.* While "the framers understood that local communities had the right to use local tax revenues to expand educational programs subsidized by the Commonwealth," they "also understood that the Commonwealth had a duty to make a 'good' or 'proper' education available to all children throughout Pennsylvania." *William Penn Sch. Dist.*, 170 A.3d at 443 n.41 (quoting Noreen O'Grady, *Comment, Toward a Thorough and Efficient Education: Resurrecting the Pennsylvania Education Clause*, 67 Temp. L. Rev. 613, 634 (1994)).

Yet instead of fulfilling this duty, Respondents have chosen to perpetuate a regressive funding scheme that makes access to a "good" and "proper" education a

function of zip code and creates unacceptable systemic inequities between groups of children.

2. Respondents have failed to carry their burden of justifying the system's disparities.

In the face of this evidence, Legislative Respondents have utterly failed to carry their burden of proof that their discriminatory funding scheme is justified under either strict scrutiny or intermediate scrutiny. Conspicuously absent from their Conclusions of Law is *any* articulation of either a compelling state interest or a rationale for why the funding scheme's disparate treatment of low-wealth districts is substantially related to its purpose. In fact, Legislative Respondents fail to even acknowledge that heightened scrutiny is accorded to important rights in the first place. *See* LR FOF/COL ¶¶ 2443-49. And the only two justifications for the current system they have ever offered — local control and the need to fund other, non-constitutional priorities — have already been foreclosed, *see supra* Section VI(C)(4).

In the absence of a constitutionally sufficient explanation for its disparities, the Commonwealth's system of education violates the Pennsylvania Constitution's equal protection provision. "Singling out for adverse treatment a class of children who are economically disadvantaged . . . does not bear a substantial relationship to any legitimate purpose to be achieved by the various education statutes." *Martinez*, 2018 WL 9489378, at *26 (finding school funding system could not pass

intermediate or strict scrutiny). For that reason, courts in other jurisdictions have repeatedly invalidated school funding systems where, as here, districts' ability to raise funds for education differ greatly based on wealth and impact the quality and availability of educational opportunities. *See Campbell Cty. Sch. Dist.*, 907 P.2d at 1269-70 (invalidating aspects of the legislature's school finance system after finding that the "amount of money raised . . . is totally dependent upon the local wealth of individual school districts" and the "presence of such wealth bears no relationship to the expense of educating students in any particular community."); *Bismarck Pub. Sch. Dist. No. 1 v. State*, 511 N.W.2d 247, 259 (N.D. 1994) (holding that the Legislature's funding method was unconstitutional because it "authorizes the distribution of funding primarily on the basis of property wealth," which was "not necessarily related to any aspect of educational needs, or educational cost per pupil"); *Serrano*, 557 P.2d at 939 (finding that "[s]ubstantial disparities in expenditures per pupil among school districts cause and perpetuate substantial disparities in the quality and extent of availability of educational opportunities," such that "the school financing system before the court fails to provide equality of treatment to all the pupils in the state . . . ."); *Robinson*, 287 A.2d at 212, 214 (holding state's system of financing public education denied equal protection under its constitution "where the capacity to raise taxes for school purposes differs according to the wealth of districts").

3. Respondents' school funding system also does not survive rational basis review.

Rational basis review is clearly inapplicable to Petitioners' equal protection claim. But even were the right to education only accorded rational basis review, Pennsylvania's system would still fail to pass constitutional muster.

To evaluate laws subject to rational basis review, courts carry out a two-step inquiry: first, they consider "whether the challenged statute seeks to promote any legitimate state interest or public value." *Curtis v. Kline*, 666 A.2d 265, 269 (Pa. 1995). And if so, they examine "whether the classification . . . is reasonably related to accomplishing that articulated state interest or interests." *Id.* "In other words, a classification must rest upon some ground of difference which justifies the classification and have a fair and substantial relationship to the object of the legislation." *William Penn Sch. Dist.*, 170 A.3d at 458 (quotation and citation omitted).

Pennsylvania's education system fails to meet even this lower standard, for the reasons explained above. It is beyond dispute that ultimately the "exclusive obligation" created by the Education Clause is the Commonwealth's. *See id.*, 170 A.3d at 442 n.40. Also beyond dispute is the impact education has on those who acquire it. *See* FOF § III(C).

Given this, a system which provides profoundly different levels of educational opportunities to students, depriving certain students of the high-quality

education to which they are entitled, based solely upon the wealth within arbitrary, state-sanctioned school district borders, is not rational. For the same reasons, under rational basis review, the Arkansas Supreme Court found "no legitimate state purpose" to support the state's education financing system because it "bears no rational relationship to the educational needs of the individual districts" and instead is "determined primarily by the tax base of each district." *DuPree*, 651 S.W.2d at 93. The court identified two problems: (1) the "substantial variation in property wealth among districts," which resulted in "sharp disparities among school districts in the expenditures per pupil and the education opportunities available as reflected by staff, class size, curriculum, remedial services, facilities, materials and equipment" and affected "a substantial number of children" in the state, and (2) "the manner in which the state determines how the state funds are distributed," namely that the majority of state funds were subject to "a 'hold-harmless' provision," which guaranteed districts the same amount of funding they received in the 1978-79 school year, without taking into account educational need or property wealth. *Id.* at 91-92, 95. Accordingly, the court affirmed the trial court's holding that "the educational opportunity of the children in this state should not be controlled by the fortuitous circumstances of residence." *Id.* at 93.

The Court should find that the children of this Commonwealth deserve no less. There is simply "no rational basis for the state government to provide only

certain . . . citizens with legal means to overcome the difficulties they encounter in pursuing" the high-quality, contemporary education the state has declared necessary for their future. *Curtis*, 666 A.2d at 269-70.

VII. CONCLUSION

Petitioners have proven the Commonwealth's school funding system violates the Education Clause, and discriminates against Petitioners and other low-wealth districts in violation of their rights to equal protection under law. Judgment should be entered in their favor.

[*Signature page to follow*]

Dated: June 1, 2022

Respectfully submitted,

By: /s/ Katrina Robson
Katrina Robson (*pro hac vice*)
Anne T. Marchitello (*pro hac vice*)
John F. Dermody (*pro hac vice*)
O'MELVENY & MYERS LLP
1625 Eye Street, NW
Washington, D.C. 20006
Telephone: (202) 383-5300

Daniel L. Cantor (*pro hac vice*)
Christopher P. Burke (*pro hac vice*)
Eli A. Grossman (*pro hac vice*)
O'MELVENY & MYERS LLP
Times Square Tower
7 Times Square
New York, NY 10036
Telephone: (212) 326-2000

Christianna K. Mantas (*pro hac vice*)
O'MELVENY & MYERS LLP
400 South Hope Street, 18th Floor
Los Angeles, CA 90071
Telephone: (213) 430-6000

Attorneys for Petitioners William Penn School District, Panther Valley School District, The School District of Lancaster, Greater Johnstown School District, Wilkes-Barre Area School District, Shenandoah Valley School District, and Pennsylvania Association of Rural and Small Schools.

By: /s/ Daniel Urevick-Ackelsberg
Mary M. McKenzie (Bar No. 46434)
Michael Churchill (Bar No. 04661)
Daniel Urevick-Ackelsberg (Bar No. 307758)
Claudia De Palma (Bar No. 320136)
PUBLIC INTEREST LAW CENTER
2 Penn Center
1500 JFK Blvd., Suite 802
Philadelphia, PA 19102
Telephone: (215) 627-7100

Attorneys for All Petitioners

By: /s/ Maura McInerney
Maura McInerney (Bar No. 71468)
Kristina A. Moon (Bar No. 306974)
Margaret Wakelin (Bar No. 325500)
EDUCATION LAW CENTER
1800 JFK Blvd., Suite 1900A
Philadelphia, PA 19103
Telephone: (215) 238-6970

Attorneys for Petitioners Jamella and Bryant Miller, Sheila Armstrong, Tracey Hughes, Pennsylvania Association of Rural and Small Schools, and the National Association for the Advancement of Colored People – Pennsylvania State Conference.

CERTIFICATION OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the United Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

I further certify that this brief is 20,598 words, and therefore complies with the word count limit set forth in this Court's Order of May 24, 2022.

/s/ Daniel Urevick-Ackelsberg
Daniel Urevick-Ackelsberg