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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**

LEGISLATIVE RESPONDENTS' PRELIMINARY OBJECTIONS TO PETITION

Respondents Senate President *Pro-Tempore* Joseph B. Scarnati, III and Speaker of the House Samuel H. Smith ("Legislative Respondents"), by and through their undersigned counsel, respectfully submit the following Preliminary Objections to the Petition for Review in the Nature of an Action for Declaratory

and Injunctive Relief ("Petition") filed by Petitioners William Penn School District, *et al.* (collectively, "Petitioners").[1]

Introduction

1. The claims asserted by Petitioners present nonjusticiable political questions. At the heart of this case is Petitioners' contention that Pennsylvania's system for funding public education is unconstitutional because, according to Petitioners, it is inadequate to meet the educational needs of students in poorer school districts.

2. This case represents yet another constitutional challenge to Pennsylvania's system for financing public education (which is based on a combination of state appropriations, local property taxes, and federal funding). On all previous occasions, such claims have failed. Twice, the Pennsylvania Supreme Court has sustained preliminary objections on the basis that the issues raised are not justiciable. *See Danson v. Casey*, 399 A.2d 360 (Pa. 1979) and *Marrero ex rel. Tabalas v. Commonwealth*, 739 A.2d 110 (Pa. 1999). No amount of creative draftsmanship or storytelling will allow Petitioners to escape the same fate here.

3. In *Danson*, the petitioners alleged that because the Philadelphia School District has (and can expect in the future to have) inadequate revenues, the statutory

[1] On or about December 1, 2014, Samuel H. Smith ceased serving as Speaker of the Pennsylvania House of Representatives. On January 6, 2015, the House will elect a new Speaker for the upcoming legislative term. At that time, Respondent Smith anticipates that he will file a motion to substitute parties.

system by which public schools are funded violated both Article III, Section 14 (the "Education Clause") and Article III, Section 32 (the "Equal Protection Clause") of the Pennsylvania Constitution. The *Danson* Court held that petitioners "have failed to state a justiciable cause of action." 399 A.2d at 363.

4. Among other things, the Supreme Court held in *Danson* that the judiciary "may not abrogate or intrude upon the lawfully enacted scheme by which public education is funded, not only in Philadelphia, but throughout the Commonwealth." *Id.* at 367.

5. Twenty years later in *Marrero*, the Supreme Court reaffirmed that where the General Assembly has provided a system for funding public education, the adequacy of that funding scheme presents a nonjusticiable political question. The Court stated in clear and unmistakable words that Pennsylvania's courts are "**unable to judicially determine what constitutes an 'adequate' education or what funds are 'adequate' to support such a program.**" 739 A.2d at 113-14 (emphasis added).

6. Such matters "are exclusively within the purview of the General Assembly's powers, and they are not subject to intervention by the judicial branch of our government." *Id.* at 114.

7. Petitioners strain to avoid an identical result here by contending that relatively recent state academic standards and student performance measures

provide "judicially manageable" standards by which the Court can assess whether the General Assembly has maintained and supported a thorough and efficient system of education. Yet, this argument is foreclosed by the Court's reasoning in *Danson* and *Marrero*.

8. There is no doubt that Pennsylvania's current financial situation requires state and local governments to make countless difficult choices about the proper allocation of limited public funds. The appropriate system (and level) for funding public education is a fair subject for vigorous public debate. However, as the Pennsylvania Supreme Court has recognized for over a century-and-a-half, "there is no syllable in the constitution which forbids the legislature to provide for a system of general education in any way which they, in their own wisdom, may think best." *Commonwealth v. Hartman*, 17 Pa. 118, 119 (1851).

9. Therefore, if Petitioners believe that the current system is unjust ***"the remedy lies, not in an appeal to the judiciary, but to the people, who must apply the corrective themselves. . . ."*** *Id.* (emphasis added).

Factual Background

10. The following factual summary is derived from the allegations of the Petition, which must be taken as true for the purpose of these Preliminary Objections only. A copy of the Petition is attached as Exhibit "A."

11. Petitioners are: (1) certain Pennsylvania public school districts who believe they are underfunded; (2) individual parents or guardians of children currently attending public schools within the Commonwealth; and (3) advocacy groups claiming to have members that are adversely affected by Pennsylvania's system for funding public education. [Petition at ¶ 15].

12. The essential allegation of the Petition is that Respondents have established "an irrational and inequitable school financing arrangement that drastically underfunds school districts across the Commonwealth and discriminates against children on the basis of the taxable property and household incomes in their district." [*Id*. at ¶ 1].

13. The Petition claims that the system for funding public schools adopted by the General Assembly violates the Education Clause of the Pennsylvania Constitution, which requires the General Assembly to "provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth." [*Id.* at ¶ 1].

14. Petitioners also claim that Respondents have violated the Equal Protection Clause, which they interpret to require Respondents to finance the Commonwealth's public education system in a manner that does not irrationally discriminate against a class of children. [*Id*.].

15. In its 1999 decision in *Marrero*, the Pennsylvania Supreme Court sustained the Commonwealth's preliminary objections and dismissed as nonjusticiable a substantially identical challenge to Pennsylvania's system for funding public education. In *Marrero*, like this case, the petitioners contended that the General Assembly violated the Pennsylvania Constitution by adopting a funding system, based largely on local tax revenues, that fails to provide adequate funding for certain school districts and students (in that case, the Philadelphia School District and its pupils). 739 A.2d at 16.

16. In 2006, the General Assembly passed Act 114, which directed the State Board of Education to conduct a comprehensive statewide "costing-out" study to determine the "basic cost per pupil to provide an education that will permit a student to meet the State's academic standards and assessments." [Petition at ¶ 3].

17. Petitioners contend that, upon the study's completion in 2007, Respondents learned that 95% of the Commonwealth's school districts required additional funding, a shortfall that totaled $4.4 billion. In response, the General Assembly approved a bill in 2008 that established funding targets for each school district and a formula for distributing education funds in a manner that would help ensure that all students could meet state academic standards. [*Id.*].

18. According to the Petition, beginning in 2011, Respondents abandoned the funding formula, cut funding to districts by more than $860 million, and passed

legislation to severely restrict local communities from increasing local funding. Meanwhile, the cost of meeting state academic standards continued to rise, widening the gap between the actual resources provided to school districts and the resources necessary to provide children in Pennsylvania with what Petitioners characterize as "an adequate education." [*Id.*].

19. Petitioners allege that these funding cuts have had a "devastating" effect on students, school districts (especially less affluent school districts), teachers, and "the future of the Commonwealth." [*Id.* at ¶ 4].

20. The latest figures from the 2012–13 school year indicate that more than 300,000 of the approximately 875,000 students tested are receiving what Petitioners label as an "inadequate education" and are unable to meet state academic standards. [*Id.*]

21. Specifically, Petitioners allege that these students are unable to achieve proficiency on the Pennsylvania System of Standardized Assessment ("PSSA") exams, which the General Assembly modified in 1999 to track state academic standards and measure student performance in reading, writing, math, and science. [*Id.*].

22. The Petitioner school districts claim that, because of insufficient funding, they are unable to provide students with the basic elements of an adequate education, such as appropriate class sizes, sufficient experienced and effective

teachers, up-to-date books and technology, adequate course offerings, sufficient administrative staff, academic remediation, counseling and behavioral health services, and suitable facilities necessary to prepare students to meet state proficiency standards. [*Id.* at ¶ 5].

23. The Petitioner school districts further allege that they lack adequate resources to prepare students to pass the Keystone Exams, which measure student performance in math, science, and English, and that achieving proficiency or higher on the Keystone Exams (or an equivalent project-based assessment) is a graduation requirement for all Pennsylvania students in the class of 2017 and beyond. Petitioners allege that "[t]he existing system of public education is therefore neither thorough nor efficient, as measured by the Commonwealth's own academic standards and costing-out study." [*Id.* at ¶ 6].

24. Petitioners assert that the levels of state education funding and high dependence on local taxes under the current financing arrangement have created "gross funding disparities" among school districts, which disproportionately harm children residing in districts with low property values and incomes. [*Id.* at ¶ 7].

25. In fiscal year 2011, local sources provided 60% of the money that funded public education, while state appropriations accounted for 34%. [*Id.*].

26. Total education expenditures per student range from $9,800 per student in school districts with low property values and incomes to more than $28,400 per student in districts with high property values and incomes. [*Id.* at ¶ 8].

27. Petitioners further contend that many low-wealth districts have higher tax rates than property-rich school districts. According to Petitioners, it is not tax effort that explains the difference in funding; rather, allegedly underfunded districts are in areas so poor that, despite their high tax rates, they cannot raise enough money to improve education without more assistance from the state. [*Id.* ¶ 9].

28. Petitioners compare the tax rates in "property-poor" districts such as Panther Valley School District ("Panther Valley") with those in wealthier districts, such Lower Merion School District ("Lower Merion"). [*Id.* at ¶ 10].

29. Petitioners concede that "the state has made some effort to close that gap, contributing twice as much per student to Panther Valley as it did to Lower Merion," but argue that even with the higher level of per-student Commonwealth funding to lower-wealth school districts "that still left Panther Valley with less than half the combined state and local funding of Lower Merion: $12,022 per student versus $26,700." [*Id.* at ¶ 11].

30. The Petition extensively catalogs the divergent financial and educational situations that it alleges to exist between Petitioner school districts on the one hand and the "property-rich" school districts such as Lower Merion, Radnor

School District and Tredyffrin-Easttown School District on the other. [*Id*. at ¶¶ 10, 11, 144, 152, 202, 227-29, 246, 268, 280-84, 295].

31. Petitioners ask this Court to declare the existing school financing arrangement unconstitutional and find that it violates both the Education Clause and the Equal Protection Clause. Petitioners claim that an objective framework for such an inquiry already exists, alleging that "[t]he state academic standards and student performance measures developed by Respondents beginning in 1999, as well as the costing-out study they commissioned, provide judicially manageable standards by which the Court can assess whether the General Assembly has maintained and supported 'a thorough and efficient system of public education to serve the needs of the Commonwealth,' as required by the Pennsylvania Constitution." [*Id.* at ¶ 12].

32. Petitioners also seek an injunction compelling Respondents to design, enact, and implement a new system for financing public schools. [*Id.* at ¶ 13].

33. Although Petitioners appear to concede that this Court cannot direct Legislative Respondents to adopt any particular funding mechanism, they contend that "[a]mong other things, the Commonwealth could raise funds for education through other forms of taxation and distribute those funds to local school districts to spend as they see fit." [Id. at ¶ 299].

FIRST PRELIMINARY OBJECTION PURSUANT TO PA.R.C.P 1028(A)(4): NONJUSTICIABILITY

34. A preliminary objection in the nature of a demurrer will be granted where the contested pleading is legally insufficient. Pa.R.C.P. 1028(a)(4).

35. In determining whether Petitioners have adequately stated a claim for relief, the Court assumes the well-pleaded factual allegations of the Petition to be true, but need not accept conclusions of law, unwarranted inferences from the facts, argumentative allegations, or expressions of opinion. *Crozer Chester Med. Ctr. v. Dep't of Labor & Indus.*, 22 A.3d 189, 194 (Pa. 2011); *Danson*, 399 A.2d at 363.

Petitioners' Claims Are Nonjusticiable Political Questions

36. There can be no doubt that Petitioners' attack on the Commonwealth's system for funding public education presents a nonjusticiable political question. The Pennsylvania Supreme Court has clearly and unequivocally held that "the General Assembly has satisfied [the constitutional mandate to provide 'a thorough and efficient *system* of public education] by enacting a number of statutes relating to the operation and funding of the public school system. . . ." *Marrero,* 739 A.2d at 113 (brackets and italics in original).

37. Courts should not inquire into the reason, wisdom, or expediency of the legislative policy with regard to education. What constitutes an "adequate" education or what funds are "adequate" to support such a program "are exclusively

within the purview of the General Assembly's powers, and they are not subject to intervention by the judicial branch of our government." *Id.* at 113-14.

38. The Petition seeks an award of declaratory and injunctive relief requiring Legislative Respondents to change the system by which education is funded in Pennsylvania. [Petition, ¶¶ 313-321].

39. Petitioners suggest that the Commonwealth might raise additional revenue through additional forms of taxation, which could be distributed to needier school districts, and sharply criticize the General Assembly for its decision to "abandon" a previous funding formula. [*Id.* at ¶¶ 141, 299]

40. These claims are the very paradigm of a nonjusticiable political question. If Petitioners believe the system of educational funding in this Commonwealth is inadequate or unjust, the remedy does not lies in an appeal to the judiciary, but with the legislature or directly with the people.

41. The constitution "has placed the education system in the hands of the legislature, free from any interference from the judiciary save as required by constitutional limitations.'" *School District of Philadelphia v. Twer*, 447 A.2d 222, 225 (Pa. 1982). *See also Newport Tp. School Dist. v. State Tax Equalization Bd.*, 79 A.2d 641, 643 (Pa. 1951) ("appropriation and distribution of the school subsidy is a peculiar prerogative of the legislature").

42. As recognized in *Danson* and *Marrero*, the General Assembly has satisfied its constitutional limitations by "enact[ing] a financing scheme reasonably related to maintenance and support of a system of public education in the Commonwealth of Pennsylvania." *Danson*, 399 A.2d at 367; *Marrero*, 769 A.2d at 113.

43. Allowing the Petition to proceed would impermissibly shift the debate over educational funding philosophy from the democratic arenas of the General Assembly and local school boards to judicial forums that are unsuited for the task. Educational advocates would advance their cause to judges, rather than to politicians or in the voting booth. Petitioners' own allegations demonstrate that the instant dispute is inherently a political one by, among other things, criticizing a "divided" legislature for its decision in 2011 to "abandon[]" a previous funding formula adopted in 2008. [Petition at ¶¶ 131, 134, 137, 141].

44. However, the General Assembly's ability to experiment and vary its previous approach with respect to matters affecting education lies at the heart of the Education Clause. *Danson*, 399 A.2d at 426; *Marrero*, 739 A.2d at 112.

45. Recent legislation demonstrates that the General Assembly continues its ongoing effort to determine the appropriate method for funding education in Pennsylvania. On June 10, 2014, Governor Corbett signed Act 51 of 2014, "An Act amending the act of March 10, 1949 (P.L.30, No.14), known as the Public School

Code of 1949, providing for basic education funding commission" ("Act 51"). Under Act 51, a bipartisan Basic Education Funding Commission ("Commission") was formed to develop and recommend a basic education funding formula and to identify factors that may be used to determine the distribution of basic education funds among Pennsylvania school districts. The Commission has already begun its work.

46. Judicial imposition of a particular funding formula favored by Petitioners would completely undermine the established principle that the Constitution has placed the education system in the hands of the legislature and the judiciary cannot tie those hands.

There Are No Judicially Manageable Standards For Granting Relief

47. The claims asserted in the Petition are also nonjusticiable because the Supreme Court has determined that there are no "judicially manageable standards" for a Court to grant the requested relief. *Danson*, 399 A.2d at 366; *Marrero*, 739 A.2d at 112-13.

48. The Petition attempts to plead around this controlling precedent by arguing that "[t]he state academic standards and student performance measures developed by Respondents beginning in 1999, as well as the costing-out study they commissioned, provide judicially manageable standards by which the Court can assess whether the General Assembly has maintained and supported a 'thorough

and efficient system of public education to serve the needs of the Commonwealth' . . ." [Petition, ¶ 12].

49. Petitioners fail to appreciate the critical difference between what the General Assembly views as an "adequate" education and what is constitutionally required. Petitioners argue that the General Assembly, by enacting the current statewide academic standards, "defined, for the first time, the education content that Pennsylvania's system of public schools must teach to all students in grades K-12 in order to prepare them to be effective citizens and to meaningfully participate in our democracy and economic life." [Petition at ¶ 99]. Petitioners further assert that "the standards-based education system was the General Assembly's articulation of what an adequate public education system must accomplish." [*Id.*].

50. It cannot be seriously contended that the Pennsylvania Constitution ***requires*** that all students be provided with an education that enables them to satisfy current academic standards – which Petitioners admit are only of fairly recent vintage. Rather, as noted, the Constitution requires only that the Legislature enact "a financing scheme reasonably related to maintenance and support of a system of public education in the Commonwealth of Pennsylvania." *Danson*, 399 A.2d at 428.

51. Moreover, it would be contrary to the "essence" of the Education Clause for a court "to bind future Legislatures and school boards to a present

judicial view of a constitutionally required 'normal program' of educational services. It is only through free experimentation that the best possible educational services can be achieved." *Marrero,* 739 A.2d at 112.

52. It is no adequate response to say that the current educational standards were developed and implemented by the General Assembly, rather than the judiciary. "It is clear beyond doubt that statutes enacted under the Legislature's duty to provide for education in the Commonwealth . . . are subject to change and revision thereafter." *Chartiers Valley Joint Schools v. County Bd. of School Directors of Allegheny County,* 211 A.2d 487, 500 (Pa. 1965).

53. As the Court phrased it in *Danson*:

> So implanted is this section of the Constitution in the life of the people as to make it impossible for a Legislature to set up an educational policy which future legislatures cannot change. The very essence of this section is to enable successive legislatures to adopt a changing program to keep abreast of educational advances. The people have directed that the cause of public education cannot be fettered, but must evolute or retrograde with succeeding generations as the times prescribe. Therefore all matters, whether they be contracts bearing upon education, or legislative determinations of school policy or the scope of educational activity, ***everything directly related to the maintenance of a "thorough and efficient system of public schools," must at all times be subject to future legislative control.*** **One legislature cannot bind the hands of a subsequent one; otherwise we will not have a thorough and efficient system of public schools.**

Danson, 399 A.2d at 425 (emphasis added).

54. Even if this Court could bind future legislatures to present educational targets and benchmarks, which it clearly cannot, it is impossible to see how the current state academic requirements could be used to create standards that are judicially manageable.

55. Petitioners rely heavily upon their allegations regarding the inability of students to achieve the Commonwealth's target goals for achieving "proficiency" or above on mandatory state exams. [*See* Petition at ¶¶ 153-168].

56. It is self-evident, however, that this Court cannot require, as a matter of constitutional interpretation, that all school districts achieve similar results on state examinations, regardless of individual, family and community circumstances.

57. At its core, the Petition is all about money. Petitioners argue that the Commonwealth should be required to implement a new funding system that reduces per-pupil spending gaps among school districts. Yet, this argument leaves the Petitioners exactly where they started: with no judicially manageable standards.

58. The Supreme Court has already rejected the proposition that the Constitution requires uniformity in per-student spending. *Danson*, 399 A.2d at 366-67; Marrero, 739 A.2d at 112. However, without such a "rigid" rule in place, there is no manageable standard for a Court to impose, let alone one that could reasonably be construed to have its roots in the Constitution.

59. A Court cannot ensure "adequate" performance simply by ordering increased spending. The Supreme Court has already recognized that "expenditures are not the exclusive yardstick of educational quality." *Marrero*, 739 A.2d at 112-13. *Accord Danson*, 399 A.2d at 427 (noting that educational quality is "dependent upon many factors" separate and apart from per-student spending).

60. Furthermore, while Petitioners invoke state performance standards as a hook for arguing that there are ready-made educational standards that a Court could enforce, the remedy that Petitioners actually seek goes far beyond the already impossible task of mandating a funding system that ensures that all districts will achieve the State's target goals for standardized test performance.

61. Petitioners recite a plethora of alleged disparities in educational programs offered in various school districts, which they contend to be tied to the amount of local funds available. Petitioners conclude that an education that fails to prepare children "to participate meaningfully in the civic, economic, social, and other activities of our society and to exercise basic civil and other rights of a citizen of the Commonwealth of Pennsylvania is constitutionally inadequate." [Petition at ¶ 92].

62. It would be virtually impossible to draft a clearer example of a goal that is not susceptible to judicial management. How could a judge could possibly determine, as a matter of constitutional interpretation, whether a school district's

students are sufficiently prepared to "participate meaningfully in the civic, economic, social, and other activities of our society"? Even if that obstacle could be overcome, how would a judge determine the cause of any ill-preparedness, *i.e.*, separating educational factors from the myriad of other personal and societal conditions that lie beyond the control of the education system?

63. The Petition's allegations suggest that Petitioners would place responsibility on the public education system to, in effect, equalize the quality of life of children and provide a counterbalance to the myriad of other personal, social and economic conditions – such as parental involvement, home and community environment, willingness to learn, and natural ability – that contribute to the conditions alleged in the Petition. It is clear that the Petition seeks a judicial remedy for a multi-faceted problem that courts, by their very nature, are not equipped to address. Trial of this case would impermissibly substitute adversary proceedings for the work of the political branches of government, with no judicially manageable standards for doing so.

WHEREFORE, Legislative Respondents respectfully request that this Honorable Court sustain their First Preliminary Objection and dismiss the Petition, with prejudice, for failure to state a claim because the claims raised therein present nonjusticiable political questions.

SECOND PRELIMINARY OBJECTION PURSUANT TO PA.R.C.P. 1028(A)(4): FAILURE TO STATE A CLAIM

Pennsylvania's Education Funding System Serves The Rational Basis Of Preserving Local Control Over Public Education

64. Petitioners' First Cause of Action claims that Pennsylvania's public school financing arrangement is not a "thorough and efficient system" and, therefore, violates the Education Clause. [Petition at ¶ 307].

65. "A statute duly enacted by the General Assembly is presumed valid and will not be declared unconstitutional unless it 'clearly, palpably and plainly violates the Constitution.'" *Harrisburg Sch. Dist. v. Zogby*, 828 A.2d 1079, 1087 (Pa. 2003).

66. As long as the legislative scheme for financing public education "has a reasonable relation" to providing for the maintenance and support of a thorough and efficient system of public schools, the General Assembly has fulfilled its constitutional duty to public school students. *Danson*, 399 A.2d at 367; *Marrero*, 739 A.2d at 133.

67. The *Marrero* Court noted that this Court correctly interpreted *Danson* to mean that the Education Clause requires the legislature to provide for a thorough and efficient system of public education, rather than conferring an individual right to a particular level or quality of education. 739 A.2d at 112.

68. The Supreme Court held in *Danson* that the Legislature has fulfilled its constitutional duties to the School District of Philadelphia by enacting a financing scheme that is reasonably related to the maintenance and support of a system of public education in the Commonwealth of Pennsylvania, is neutral with regard to the School District of Philadelphia, and provides it with its fair share of state subsidy funds. 399 A.2d at 367.

69. As was true when *Danson* was decided, Pennsylvania's current system for funding public education is based on a combination of state appropriations and local property taxes, with some additional funding coming from the federal government. [Petition at ¶ 262].

70. Petitioners concede that the current funding formula provides more than an equal share of state education subsidy funds to the Petitioners. In fact, the current funding formula provides a ***higher*** per-student Commonwealth subsidy to poorer school districts. [Petition at ¶ 267 ("[t]he higher the percentage the poorer the district and the more money it will receive from the Commonwealth"); *id.* at ¶ 11 ("[a]lthough the state has made some effort to close that gap, contributing twice as much per student to Panther Valley as it did to Lower Merion, that still left Panther Valley with less than half the combined state and local funding of Lower Merion")].

71. Petitioners criticize the "unusually high dependence on local taxes," which they believe disproportionately harms children in districts with low property values. [Petition at ¶ 7]. However, the *Danson* Court specifically noted the historic importance of preserving local control over education, explaining that: "the framers endorsed the concept of local control to meet diverse local needs and took notice of the right of local communities to utilize local tax revenues to expand educational programs subsidized by the state." 399 A.2d at 367.

72. Petitioners' conclusory assertion that local control over education funding in Pennsylvania is "illusory" and "a myth" are refuted by the specific allegations of the Petition, which irrefutably demonstrate the continued importance of local control, by discussing the wide range of choices different school district Petitioners have made to address their current budget constraints. [Petition at ¶¶ 181-196, 206-224].

73. Petitioner school districts clearly wish that they did not have to make these tough choices and would prefer their financial situations to be more like what they allege to exist in Lower Merion or Radnor. However, the fact that some people – or communities – have more money to spend on the necessities and luxuries of life is an inherent component of a free market society, and certainly is not a constitutional violation. *See Marrero,* 739 A.2d at 112 (the Constitution does

not "confer an individual right upon each student to a particular level or quality of education").

74. Petitioners' own averments confirm, rather than disprove, the primary role of local educators in choosing how to best utilize available education funds. The diverse budget-cutting strategies adopted by Petitioner school districts, as outlined in the Petition, were made at the local level, not imposed by the Commonwealth. Therefore, they reflect the very essence of "local control."

75. Petitioners' allegations underscore the fact that their claims merely reflect a policy disagreement with the General Assembly over the amount of state tax dollars that should be devoted to public education and the manner in which those funds should be allocated. Petitioners repeatedly assert that public education in Pennsylvania is underfunded and voice their displeasure with particular policy decisions made by the General Assembly. Petitioners' arguments, however, plainly must be made to the General Assembly – or directly to the voting public – and are not a proper subject for judicial resolution.

WHEREFORE, Legislative Respondents respectfully request that this Honorable Court sustain their Second Preliminary Objection and dismiss Petitioners' First Cause of Action, with prejudice, for failure to state a claim upon which relief can be granted.

THIRD PRELIMINARY OBJECTION PURSUANT TO PA.R.C.P. 1028(A)(4): FAILURE TO STATE A CLAIM

Pennsylvania's Education Funding System Serves The Rational Basis Of Preserving Local Control Over Public Education

76. Petitioners' Second Cause of Action claims that Pennsylvania's system of funding public education violates the Equal Protection Clause by irrationally discriminating against students in poorer school districts. [Petition at ¶¶ 308-09].

77. A statute "implicating neither suspect classes nor fundamental rights-will be sustained if it meets a 'rational basis' test." *Pennsylvania Liquor Control Bd. v. Spa Athletic Club,* 485 A.2d 732, 734 (Pa. 1984) (citation omitted).

78. As long as the legislative scheme for financing public education "has a reasonable relation" to providing for the maintenance and support of a thorough and efficient system of public schools, the General Assembly has fulfilled its constitutional duty to the public school students. *Danson,* 399 A.2d at 367; *Marrero,* 739 A.2d at 133.

79. As discussed above, the Legislature has fulfilled its constitutional duties by enacting a financing scheme that is reasonably related to the maintenance and support of a system of public education in the Commonwealth of Pennsylvania, is neutral with regard to the Petitioners, and provides Petitioners with a more-than-equal share of state subsidy funds. *Danson,* 399 A.2d at 367.

Education Is Not A "Fundamental Right" For Purposes Of Equal Protection Analysis

80. Petitioners try to avoid application of the rational basis test by arguing that education is a fundamental right in Pennsylvania. [Petition at ¶¶ 308, 312].

81. In *Danson*, the Supreme Court implicitly rejected this argument by applying a rational basis test instead of a strict scrutiny analysis. The *Danson* majority did not adopt the position expressed by Justice Manderino in dissent, where he opined that "[b]ecause appellants' position alleges that the statutory financing scheme interferes with that constitutional right, it must be closely scrutinized to ascertain whether the alleged discrimination may be justified by a 'showing of a compelling state interest, incapable of achievement in some less restrictive fashion. . . ." 399 A.2d at 371 (Manderino, J. dissenting).

82. Several subsequent decisions of this Court have confirmed that education is not deemed a fundamental right in Pennsylvania. *See Bensalem Tp. Sch. Dist. v. Commonwealth*, 524 A.2d 1027, 1029 (Pa. Commw. Ct. 1987) ("Under the Pennsylvania Constitution, the General Assembly is charged with providing 'for the maintenance and support of a thorough and efficient system of public education.' Pennsylvania courts, however, have refused to recognize in this mandate a fundamental right to education subject to strict judicial scrutiny."); *Lisa H. v. State Board of Education*, 447 A.2d 669, 673 (Pa. Commw. Ct. 1982) ("the right to a public education in Pennsylvania is not a fundamental right, but rather a

statutory one and . . . as such, it limited by statutory provisions."), *aff'd*, 467 A.2d 1127 (Pa. 1983); *D.C. v. School District of Philadelphia*, 879 A.2d 408 (Pa. Commw. Ct. 2005) (noting that the right to education is not a fundamental one, and applying the rational basis test to a claim that a statute governing the disposition of public school students in Philadelphia returning from juvenile delinquency placement was unconstitutional). *Cf. San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973) (holding that the right to education is not a fundamental right under the United States Constitution's Equal Protection Clause).

WHEREFORE, Legislative Respondents respectfully request that this Honorable Court sustain their Third Preliminary Objection and dismiss Petitioners' Second Cause of Action, with prejudice, for failure to state a claim upon which relief can be granted.

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