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**

REPLY BRIEF IN SUPPORT OF EXECUTIVE BRANCH RESPONDENTS' PRELIMINARY OBJECTIONS TO THE PETITION FOR REVIEW

KATHLEEN G. KANE
Attorney General

By: LUCY E. FRITZ
Deputy Attorney General
Attorney I.D. #307340

KENNETH L. JOEL
Chief Deputy Attorney General
Chief, Litigation Section

Counsel for Executive Respondents

Office of Attorney General
Litigation Section
15th Floor, Strawberry Square
Harrisburg, PA 17120
Direct: 717-787-3102
Fax: 717-772-4526
lfritz@attorneygeneral.gov

Date: March 3, 2015

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page**

ARGUMENT

The Governor, the Department of Education, and the State Board of Education (collectively, the "Executive Branch Respondents"),[2] by and through their legal counsel, file this Reply Brief in Support of their Preliminary Objections.[3]

I. THE PETITION FOR REVIEW PRESENTS NON-JUSTICIABLE POLITICAL QUESTIONS.

Despite the arguments of Petitioners and *Amici*, the Petition for Review in this case simply rehashes claims that both this Court and the Pennsylvania Supreme Court have held repeatedly to be non-justiciable. This precedent, binding

---

[2] It should be noted that since the time that this case was commenced, preliminary objections were asserted, and the opening briefs filed, a new Governor has taken office. Governor Tom Wolf supports the preliminary objections filed on behalf of Executive Respondents by the Office of Attorney General, questioning under current judicial precedents of the Supreme Court the justiciability of Petitioners' constitutional challenge to the statutes enacted by the General Assembly that provide for the funding of the Commonwealth's public education system.

However, it also must be emphasized that support of the Attorney General's motion to dismiss Petitioners' lawsuit in this Court on justiciability grounds should not be interpreted as satisfaction by the Governor with the *policy* choices that have been made by the Legislature over the years relating to public school funding as reflected in current statutes. The Governor believes that more can and should be done and is committed to working with the General Assembly to better our public education system.

[3] Respondents file this reply brief in accordance with Pa. R.A.P. 2113(a) and this Court's holding in *Chester Community Charter School v. Dep't of Education*, 996 A.2d 68, 74-75 (Pa. Cmwlth. 2010).

on this Court, "forecloses the relief sought by [Petitioners]," *see Marrero v*. *Commonwealth*, 739 A.2d 110, 114 (Pa. 1999) ("*Marrero II*"), and Petitioners' reliance upon cases outside the realm of school funding and from other jurisdictions is unavailing.

A. The Briefs in Opposition to Respondents' Preliminary Objections Downplay or Misconstrue Binding Precedent.

There is direct precedent of the Supreme Court that controls this constitutional challenge to the statutory system of school funding in the Commonwealth – specifically, cases challenging the adequacy of that funding system. *See Danson v*. *Casey*, 399 A.2d 360 (Pa. 1979); *Marrero*, *supra*. Petitioners' attempts to distinguish these cases wholly miss the mark.

First, Petitioners inaccurately claim that the Supreme Court did not reject an education funding challenge in *Danson* on political question grounds. Petitioners' Br. at 22. Similar to the case *sub judice*, the appellants in *Danson* claimed that by providing for "a thorough and efficient system of public education," the Education Clause and Equal Protection Clause "guarantee[d] them a constitutionally mandated minimum level of educational services." 399 A.2d at 366. Harkening back to its decision in *Teachers' Tenure Act Cases*, 197 A. 344 (Pa. 1938), the Supreme Court held that just as the Pennsylvania Constitution "make[s] it impossible for a Legislature to set up an educational policy which future legislatures cannot change," 197 A. at 352, it is also impossible for "this Court to

bind future Legislatures and school boards to a present judicial view of a constitutionally required 'normal' program of educational services." *Danson*, 399 A.2d at 366. In rejecting the appellants' claim that the Constitution requires that educational offerings be uniform, the Court went on to explain:

> Even were this Court to attempt to define the specific components of a "thorough and efficient education" in a manner which would foresee the needs of the future, the only judicially manageable standard this Court could adopt would be the rigid rule that each pupil must receive the same dollar expenditures. Even appellants recognize, however, that expenditures are not the exclusive yardstick of educational quality, or even of educational quantity. It must indeed be obvious that the same total educational and administrative expenditures by two school districts do not necessarily produce identical educational services. The educational product is dependent upon many factors, including the wisdom of the expenditures as well as the efficiency and economy with which available resources are utilized.

Id. Thus, the Supreme Court clearly relied on the political question doctrine and the concept of justiciability in rendering its decision.

Second, Petitioners' attempt to distinguish the Supreme Court's decision in *Marrero* – a case where even Petitioners admit the Court abstained from hearing an education funding challenge on political question grounds, Petitioners' Br. at 25 – is equally erroneous. Petitioners assert that *Marrero* was decided before the Legislature's current pronouncement of what a "thorough and efficient system of public education" entails, specifically before current regulatory provisions establishing academic standards were promulgated with legislative authorization

and the 2007 costing-out study was commissioned. Petitioners' Br. at 26. However, the academic standards were adopted by the State Board of Education – not the General Assembly – and the costing out study was conducted by a private contractor hired by the State Board. Pet. for Review, pp. 32-49. These regulations issued by an administrative body, not the General Assembly, and the findings of a contractor of the State Board – are not *constitutional* mandates that bind the Legislature.

Additionally, while specific provisions have changed over time, the Public School Code, since its inception, has established a schedule of services for school districts to provide to their students. *See Danson v. Casey*, 382 A.2d 1238, 1241 (Pa. Cmwlth. 1978). Petitioners' argument was specifically rejected by the Supreme Court in *Danson*, which held that the School District of Philadelphia "has no greater duty to provide education for the children of Philadelphia than the Legislature has delegated to it. It would be unreasonable to conclude that a greater duty has been delegated than that which the Legislature, through the statutory funding scheme, has provided the school district the means to fulfill." *Danson*, 399 A.2d at 365.

Relying on *Danson*, this Court in *Marrero I* held it was unable judicially to define not only what constitutes an adequate education, but also "what funds are 'adequate' to support such a program." 709 A.2d at 965. In the end, this Court

held it was precluded from addressing the merits of the petitioners' claims – including the claim that the Legislature had provided inadequate funding to the School District of Philadelphia – because, as the Supreme Court has held, "those issues have been solely committed to the discretion of the General Assembly." *Id*. at 966. In affirming this Court's decision, the Supreme Court agreed: "[C]onscientious adherence to precedent [ ] forecloses the relief sought by appellants." *Marrero II*, 739 A.2d at 114.

B. The Pennsylvania Cases Upon Which Petitioners and *Amici* Rely For Their Argument That This Case Is Justiciable Are Inapposite.

The cases that Petitioners and *Amici* cite in support of their argument that the claims in this matter are justiciable do not involve challenges to the Commonwealth's system of school funding. In light of the above binding precedent, which is directly on point, these cases are inapposite and do not change the outcome of the present constitutional challenge.

Petitioners' first cite to the *Teachers' Tenure Act Cases*, 197 A. 344 (Pa. 1938), and contend that, because the Supreme Court decided the underlying constitutional issues in that matter, this Court has the authority to do so here. Petitioners' Br. at 29-30. That case, however, involved various challenges to the Teachers' Tenure Act – specifically, the provisions that preserved the contractual status of teachers in new contracts and placed limitations on the removal and demotion of those teachers. 197 A. at 351. The fact that the Supreme Court

reached the merits of *those issues in that case* is simply not determinative of whether this Court can, under more recent precedents, consider the merits of Petitioners' Equal Protection and Education Clause challenges in this case challenging the adequacy of school funding.

Petitioners and *Amici* also rely heavily upon the Supreme Court's very recent decision in *Hospital & Healthsystem Ass'n of Pa. v. Commonwealth*, 77 A.3d 587 (Pa. 2013) ("*HHA*"). Petitioners' Br. at 34-36; PFT/AFT PA Br. at 31-33. This does not advance Petitioners' cause. The issue in *HHA* was whether the Commonwealth's attempt to balance the budget by making a one-time transfer of funds from the Medical Care Availability and Reduction of Error Fund to the General Fund was constitutional. 77 A.3d at 591. *HHA* clearly did not implicate the school funding scheme, but the General Assembly's appropriation powers. *Id*. The Supreme Court's analysis of whether that issue was justiciable simply does not apply to Petitioners' claims in this case, especially given the binding precedent enunciated in *Danson* and *Marrero*.

Amici's reliance upon *Council 13, AFSCME ex rel. Fillman v. Rendell*, 986 A.2d 63 (Pa. 2009), is similarly misplaced. *Council 13* did not involve a challenge to the school funding scheme, but the General Assembly's annual general appropriations act out of which state employees' salaries are paid. *Id*. at 67. In that case, the petitioners sought a declaration from the Court that the Governor's

decision to furlough certain state employees if a budget was not timely passed violated the federal Fair Labor Standards Act of 1938 ("FLSA"). *Id*. at 70. Again, the Supreme Court's decision that this different legal issue was, in fact, justiciable does not overturn the binding precedent of *Danson* and *Marrero*.

Both Petitioners and *Amici* argue that recent case law demonstrates that the claims in this case are justiciable and courts have grown reluctant to apply the political question doctrine. Petitioners Br. at 30-36; PFT/AFT PA Br. at 25-47. However, in a case decided not even two months ago, *Pa*. *Envtl*. *Def*. *Found*. *v*. *Commonwealth*, No. 228 M.D. 2012, 2015 WL 79773 (Pa. Cmwlth. Jan. 7, 2015), *appeal pending*, No. 11 MAP 2015, this Court sitting *en banc* denied constitutional challenges to budget-related decisions pertaining to the leasing of State lands for oil and natural gas development. Citing to *Marrero* and other cases, the Court reiterated the principle that "except in extreme cases where the independence of the judicial branch has been threatened, the above precedent shows a reluctance in, if not an outright refusal by, this Court to second guess the amounts of the General Assembly's appropriations to Commonwealth agencies." *Id*. at *22.

C. Relevant Case Law From Other Jurisdictions Supports Respondents' Arguments That Petitioners' Claims Are Non-Justiciable and Barred By The Separation of Powers Doctrine.

Throughout their briefs, Petitioners and *Amici* rely upon the decisions of various other states on the issue of school funding in support of their arguments.

Respondents caution that several crucial factors must be considered in weighing the persuasiveness and relevance of these decisions, including, *inter alia*: the specific language of the state's Education Clause compared to that of the Commonwealth; the legislative history of the state's current constitutional provision; binding precedent from the particular jurisdiction regarding constitutional interpretation, particularly with respect to the current Education Clause, and the issues of justiciability and separation of powers; and whether the state has specifically determined that education is a fundamental right, subject to strict scrutiny. Given these issues, many of the cases upon which Petitioners rely are inapplicable to this Court's analysis. Executive Branch Respondents also point out several key decisions of other jurisdictions that are on point and notably absent from Petitioners' brief.

In *Hornbeck v. Somerset County Bd. of Educ.*, 458 A.2d 758 (Md. 1983), the Court of Appeals of Maryland considered claims very similar to those raised in this action. The *Hornbeck* complaint alleged "that because of the insufficiency of school funds caused by the State's discriminatory, unequal and inadequate school funding system, the plaintiff school boards were unable to meet their constitutional obligations under state and federal equal protection guarantees or under the 'thorough and efficient' clause of . . . the Maryland Constitution." *Id.* at 764. The court held that the state's education clause did not compel the enactment of a

statute mandating exact equality in per pupil funding, *id*. at 770, and that development of the statewide system was a matter for legislative determination. *Id*. at 776-77 (citing *Danson*). The court noted that Maryland had, "by legislation, and by regulations and bylaws adopted by the State Board of Education, established comprehensive statewide qualitative standards governing all facets of the educational process in the State's public elementary and secondary schools." *Id*. at 780. The court found that Maryland's system of financing its public schools did not violate either state or federal equal protection mandates. In doing so, the court stated that while "education can be a major factor in an individual's chances for economic and social success as well as a unique influence on a child's development as a good citizen and on his future participation in political and community life," *id*. at 786 (citation omitted), it was not a fundamental right for purposes of equal protection analysis. *Id*.

In closing, the Maryland court stressed the importance of the doctrine of separation of powers:

> Necessarily, we approach these issues with "a disciplined perception of the proper role of the courts in the resolution of our State's educational problems, and to that end, more specifically, judicial discernment of the reach of the mandates of our State Constitution in this regard." The expostulations of those urging alleviation of the existing disparities are properly to be addressed to the legislature for its consideration and weighing in the discharge of its continuing obligation to provide a thorough and efficient statewide system of free public schools. Otherwise stated, it is not within the power or province of members of the Judiciary to advance their own personal

> wishes or to implement their own personal notions of fairness under the guise of constitutional interpretation. The quantity and quality of educational opportunities to be made available to the State's public school children is a determination committed to the legislature or to the people of Maryland through adoption of an appropriate amendment to the State Constitution.

Id. at 790 (citations omitted).

Illinois considered similar constitutional challenges to its system of school funding in *Committee for Educational Rights v*. *Edgar*, 672 N.E.2d 1178 (Ill. 1996). The plaintiffs in that case sought "a declaratory judgment that to the extent that the statutory school finance scheme fails to correct differences in spending and educational services resulting from differences in [local taxable property wealth]," the scheme violated the state constitution's equal protection clause and education article. *Id*. at 1182. Notably, the education article of Illinois' constitution mandated that the "State shall provide for an efficient system of high quality public educational institutions and services," and that the State was primarily responsible for financing such a system. *Id*. at 1183.

The Illinois court held that disparities in educational funding resulting from differences in local property wealth did not offend the education article's efficiency requirement. *Id*. at 1189. The court also held that "questions relating to the quality of education are solely for the legislative branch to answer," noting:

> What constitutes a "high quality" education, and how it may best be provided, cannot be ascertained by any judicially discoverable or manageable standards. The constitution provides no principled basis

> for a judicial definition of high quality. It would be a transparent conceit to suggest that whatever standards of quality courts might develop would actually be derived from the constitution in any meaningful sense. Nor is education a subject within the judiciary's field of expertise, such that a judicial role in giving content to the education guarantee might be warranted. Rather, the question of educational quality is inherently one of policy involving philosophical and practical considerations that call for the exercise of legislative and administrative discretion.

Id. at 1191. Finally, the court held that education was not a fundamental individual right for purposes of equal protection analysis, and that the state's school funding system was rationally related to the legitimate State interest of promoting local control. *Id*. at 1195-96.

In considering challenges to the state's school funding system in *City of Pawtucket v*. *Sundlin*, 662 A.2d 40 (R.I. 1995), the Supreme Court of Rhode Island acknowledged that "the analysis of the complex and elusive relationship between funding and 'learner outcomes,' when all other variables are held constant, is the responsibility of the Legislature, which has been delegated the constitutional authority to assign resources to education and to competing state needs." *Id*. at 57. The court held that plaintiffs had asked the judiciary "to enforce policies for which there are no judicially manageable standards," *id*. at 58, noting the decades-long struggle of the Supreme Court of New Jersey when it attempted to decide what constituted a "thorough and efficient" system of education. *Id*. at 59.

Of significant importance to the case *sub judice*, the Rhode Island court stated it was "particularly troubled by a definition of 'equity' that requires 'a sufficient amount of money [to be] allocated to enable all students to achieve learner outcomes.' As observed by the United States Supreme Court in *Jenkins*, 515 U.S. at ---, 115 S.Ct. at 2056, 'numerous external factors beyond the control of the [school district] and the State affect student achievement.'" *Id*. at 61.

Finally, the Supreme Court of Rhode Island rejected the argument that school funding be subject to strict scrutiny and held that the state's current financing scheme was "rationally related to legitimate state interests such as balancing competing needs and encouraging local participation in education." *Id*.[4]

[4] *See also McDaniel v*. *Thomas*, 285 S.E.2d 156 (Ga. 1981) (holding that state school finance system did not violate equal protection provisions of the state constitution, using rational basis analysis; and rejecting contention that low wealth districts fail to provide an "adequate education" because it is the legislative branch which must give content to the term "adequate"); *Coalition for Adequacy and Fairness in School Funding, Inc*. *v*. *Chiles*, 680 So. 2d 400, 406-07 (Fla. 1996) (affirming dismissal of action because appellants failed to demonstrate a violation of the legislature's duties under the Florida Constitution, stating: "To decide such an abstract question of 'adequate' funding, the courts would necessarily be required to subjectively evaluate the Legislature's value judgments as to the spending priorities to be assigned to the state's many needs, education being one among them. In short, the Court would have to usurp and oversee the appropriations power, either directly or indirectly, in order to grant the relief sought."), *superseded by constitutional amendment*, *Haridopolos v*. *Citizens for Strong Schools, Inc*., 81 So. 3d 465 (Fla. Dist. Ct. App. 2012).

D. There Is a Lack of Judicially Manageable Standards For Resolving Petitioners' Claims, and Their Resolution Would Require the Court to Make Policy Determinations.

Petitioners argue that their claims can be resolved without requiring this Court to make a public policy judgment because they "are not asking the Court to order the legislature to fund education at the precise levels identified in the costing-out study or to dictate how the legislature fulfills its constitutional obligation." Petitioners' Br. at 15. However, Petitioners gloss over the fact that they *are* asking the Court to determine what level of funding is *adequate* to support a "thorough and efficient system of public education." This is, necessarily, a policy determination, and one in which the courts of this Commonwealth have repeatedly refused to engage. *See Marrero I*, *Marrero II* and *Danson*.

In *Marrero I*, this Court held:

> Article 3, Section 14 places the responsibility for the maintenance and support of the public school system squarely in the hands of the legislature. Thus, this court will not inquire into the reason, wisdom, or expediency of the legislative policy with regard to education, nor any matters relating to legislative determinations of school policy or the scope of educational activity. In short, as the Supreme Court was unable to judicially define what constitutes a "normal program of educational services" in *Danson*, this court is likewise unable to judicially define what constitutes an "adequate" education or what funds are "adequate" to support such a program. These are matters which 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. *Danson*; *Teachers' Tenure Act Cases*; *Ross' Appeal*. *See also School District of Newport Township v. State Tax Equalization Board*, 366 Pa. 603, 79 A.2d 641 (1951). (The appropriation and distribution of the school subsidy is the peculiar

> prerogative of the General Assembly for no other branch of our government has the power to appropriate funds).

Marrero I, 709 A.2d at 965.

Interestingly, in their request for relief, the petitioners in *Marrero* asked this Court to declare, *inter alia*, that the Commonwealth had failed to fulfill its obligation to provide for an adequate system of public schools, and order the General Assembly to either amend the school funding legislation or enact new legislation. *Id*. This is exactly the same relief Petitioners now request.

As the Supreme Court stressed in *Danson*, "expenditures are not the exclusive yardstick of educational quality, or even of educational quantity. . . . The educational product is dependent upon many factors, including the wisdom of the expenditures as well as the efficiency and economy with which available resources are utilized." *Danson*, 399 A.2d at 366. In order to determine what amount of funding is adequate on a state-wide basis, this Court would have to consider and weigh the importance of a multitude of factors, including decisions by each of the 500 school districts throughout the Commonwealth regarding how to utilize their resources.

Indeed, despite their arguments to the contrary, Petitioners are asking this Court to make policy determinations. As this Court recently explained in *Pa*. *Envtl*. *Def*. *Found*. *v*. *Commonwealth*, No. 228 M.D. 2012, 2015 WL 79773 (Pa. Cmwlth. Jan. 7, 2015) (*en banc*):

> [I]t is an equally unassailable truth enshrined in our governing document that the legislative and executive branches must annually reach agreement on a balanced plan to fund the Commonwealth's operations for the fiscal year, including funding vital services to the most vulnerable among us in all corners of the Commonwealth. And, how they do this is as much a matter of policy as it is a matter of law, only the latter of which is reviewable by the judicial branch. Decisions to reduce a General Fund appropriation to an agency, even to an agency with constitutional duties, are matters of policy.

Id. at *11.

Similarly, Petitioners' argument that there are judicially manageable standards for resolving their claims must fail. As quoted above, the Supreme Court repeatedly has stated that there are no judicially manageable standards for addressing a challenge to the Commonwealth's school funding scheme, particularly regarding the adequacy of that funding. *See Danson*; *Marrero II*. The crux of Petitioners' argument is their allegation that students are unable to achieve the statewide goals for "proficiency" or above on mandatory state exams. *See* Petition for Review, ¶¶ 153-168; Petitioners' Br. at 3, 10-15. However, as Legislative Respondents said in their initial brief, "Petitioners conflate education policy with constitutional mandate." Legislative Respondents' Br. at 26.

The Supreme Court's decision in *Council 13* does not change this conclusion. In *Council 13*, the Supreme Court determined that the preemption issue did not implicate the political question doctrine because the petitioners were not asking the Court "to make the Governor's furlough decisions or other policy

determinations for him." *Id*. at 76. Rather, the petitioners were asking the Court to decide a pure question of law – whether Section 6 of the FLSA preempted Article III, § 24 of the Pennsylvania Constitution. *Id*. As the Court noted, such a decision "would in no way involve the Judiciary in the role assigned to the General Assembly of enacting a budget, or in the role assigned to the Governor of preparing and approving a budget." *Id*. at 75. Unlike *Council 13*, the matter before this Court would not present a pure question of law and would, in fact, require the Judiciary to delve into the budgetary realm.

Petitioners' argument regarding the costing-out study is similarly flawed, as the Court cannot transmute the findings of a professional contractor retained by the State Board of Education on direction of the General Assembly to perform a service for the Commonwealth into a constitutional mandate. In addition, the Supreme Court specifically upheld this Court's determination in *Marrero I* that it was unable to define judicially what funds are adequate to support a thorough and efficient system of public education. 709 A.2d at 965. The 2007 costing-out study, moreover, has never been adopted by the General Assembly as law – despite the intervening years. In fact, Petitioners even concede that the 2007 costing-out study cannot be a used as the standard as they are not "asking the Court to order the legislature to fund education at the precise levels identified in the costing-out study." Petitioners' Br. at 15.

II. PETITIONERS' CLAIMS ARE NOT SUBJECT TO STRICT SCRUTINY.

Petitioners argue that the Commonwealth's education funding scheme is unconstitutional under any level of scrutiny, but that it should be subject to strict scrutiny because it burdens a fundamental right. Petitioners' Br. at 38-48; *see also* PFT/AFT PA Br. at 21-25. Petitioners cite to the Supreme Court's decision in *School Dist. of Wilkinsburg v. Wilkinsburg Educ. Ass'n*, 667 A.2d 5 (Pa. 1995), for the proposition that education is a fundamental right and, therefore, their equal protection claim in this case should be subject to strict scrutiny.

The issue in *Wilkinsburg* was whether, under the particular circumstances faced by the school board, the Public School Code prohibited the subcontracting of teacher services. 667 A.2d at 8-9. It is true that the Court stated, in *dicta*, that "public education in Pennsylvania is a fundamental right." *Id*. at 9. However, as Petitioners and *Amici* admit, the Court did not impose a strict scrutiny standard or even reach the merits of an equal protection claim. Rather, the Court merely remanded the case for an evidentiary hearing. *Id*. Therefore, Petitioners' reliance upon *Wilkinsburg* is misplaced.

In fact, Petitioners' argument regarding the application of strict scrutiny goes against almost eighty years of precedent. "In considering laws relating to the public school system, courts will not inquire into the reason, wisdom, or expediency of the legislative policy with regard to education, but whether the

legislation has a reasonable relation to the purpose expressed in [the Education Clause]." *Teachers' Tenure Act Cases*, 197 A. at 352. Courts repeatedly have cited to this standard, and it has been specifically applied in the context of constitutional challenges to school funding. *See Danson*, 399 A.2d at 367 ("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."); *Marrero I*, 709 A.2d at 963; *Marrero II*, 739 A.2d at 113-14.

CONCLUSION

For the foregoing reasons and those enunciated in the Executive Branch Respondents' initial brief, this Court should sustain the Executive Branch Respondents' preliminary objections and dismiss the petition for review with prejudice.

Respectfully submitted,

KATHLEEN G. KANE
Attorney General

By: ***s/ Lucy E. Fritz***
LUCY E. FRITZ
Deputy Attorney General
Attorney ID #307340

KENNETH L. JOEL
Chief Deputy Attorney General
Chief, Civil Litigation Section

Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, PA 17120
Phone: (717) 787-3102
Fax: (717) 772-4526
lfritz@attorneygeneral.gov

Date: March 3, 2015

CERTIFICATE OF SERVICE

I, Lucy E. Fritz, Deputy Attorney General, do hereby certify that I have this day served the foregoing Reply Brief in Support of Executive Branch Respondents' Preliminary Objections to the Petition for Review by depositing two copies of the same in the United States mail, first class, postage prepaid, to the following:

Matthew J. Sheehan
O'Melveny and Myers, LLP
1625 Eye Street, NW
Washington, DC 20006
Counsel for petitioners

Brad M. Elias
O'Melveny and Myers, LLP
Times Square Tower
7 Times Square
New York, NY 10036
Counsel for petitioners

Jennifer R. Clarke
Public Interest Law Center
1709 Benjamin Franklin Parkway
Philadelphia, PA 19103
Counsel for petitioners

Patrick M. Northen
Dilworth Paxson, LLP
1500 Market Street, Suite 3500E
Philadelphia, PA 19102-2101
Counsel for legislative respondents

Maura McInerney
Education Law Center
1315 Walnut Street, Suite 400
Philadelphia, PA 19107
Counsel for petitioners

Ralph J. Teti
Willig, Williams & Davidson
1845 Walnut Street, 24th Floor
Philadelphia, PA 19103
Counsel for amici curiae PFT and AFT PA

*s/ Lucy Fritz*_____
Lucy Fritz
Deputy Attorney General

Date: March 3, 2015

CERTIFICATE OF COMPLIANCE WITH RULE 2135(D)

This brief complies with the length-of-brief limitation of Pa.R.A.P. 2135, because this Brief contains 5,721 words. This Certificate is based upon the word count of the word processing system used to prepare this Brief.

*s/ Lucy Fritz*_____
Lucy Fritz
Deputy Attorney General

Date: March 3, 2015