

IN THE SUPREME COURT OF PENNSYLVANIA

Docket No. 46 MAP 2015

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; JAMELLA AND BRYANT MILLER, parents of K.M., a minor; SHEILA ARMSTRONG, parent of S.A. a minor; TYESHA STRICKLAND, parent of E.T., a minor; ANGEL MARTINEZ, parent of A.M., a minor; BARBARA NEMETH, parent of C.M., minor; TRACEY HUGHES, parent of P.M.H., a minor; PENNSYLVANIA ASSOCIATION OF RURAL AND SMALL SCHOOLS; and THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE-PENNSYLVANIA STATE CONFERENCE,

Appellants,

v.

PENNSYLVANIA DEPARTMENT OF EDUCATION; JOSEPH B. SCARNATI III, in his official capacity as President Pro-Tempore of the Pennsylvania Senate; MICHAEL C. TURZAI, in his official capacity as the Speaker of the Pennsylvania House of Representatives; TOM WOLF in his official capacity as the Governor of the Commonwealth of Pennsylvania; PENNSYLVANIA STATE BOARD OF EDUCATION; and PEDRO A. RIVERA, in his official capacity as the Acting Secretary of Education,

Appellees.

Appeal from Order and Judgment of the Commonwealth Court entered on April 21, 2015 at 587 MD 2014, granting preliminary objections

AMICI CURIAE BRIEF IN SUPPORT OF APPELLANTS

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STATEMENTS OF INTERESTS OF *AMICI CURIAE*

Public Citizens for Children and Youth (“PCCY”) is a Pennsylvania non-profit that advocates for federal, state, and local policies that improve the lives of children. To this end, PCCY has offered research, reports, and training on key issues related to public education. PCCY also seeks to foster public support for legislative and regulatory policies that improve the quality of education for Pennsylvania’s schoolchildren.

Education Law Center (“ELC”) is a non-profit organization established to advocate, on behalf of public school children, for access to fair and adequate educational opportunity under state and federal laws through policy initiatives, research, public education, and legal action. ELC represented the plaintiff school children in the landmark case *Abbott v. Burke*, 575 A.2d 359 (N.J. 1990), and continues to advocate on their behalf to ensure effective implementation of the *Abbott* remedies, which have “enabled children in Abbott districts to show measurable educational improvement.” *Abbott v. Burke*, 971 A.2d 989, 995 (N.J. 2009) (internal citation omitted). In states across the nation, ELC advances children’s opportunities to learn and assists advocates promoting better educational opportunities. ELC provides analyses and other support on relevant litigation, high quality preschool and other proven educational programs, resource gaps, education cost studies, and policies that help states and school districts gain the expertise needed to narrow and close achievement gaps. As part

of its work, ELC has participated as amicus curiae in state educational opportunity cases in California, Colorado, Connecticut, Indiana, Maryland, Oregon, South Carolina, and Texas.

The Pennsylvania Association of School Nurses and Practitioners (“PASNAP”) is a non-profit organization that represents over 800 certified school nurses and school nurse practitioners. PASNAP aims to provide the structure and leadership necessary to promote unity among all certified school nurses, advance the professional practice of school health through continuing education, improve political awareness, and assure optimal student health. PASNAP is an endorsing organization for the Fair Funding Coalition.

Education Matters in the Cumberland Valley is a grassroots organization that was founded by parents and community members who support sensible public education in Pennsylvania. The organization seeks to promote the value of public education, inform the community about current issues in public education, raise awareness of legislation that affects Pennsylvania’s public schools, and advocate for policies that would create a strong public-education system.

Yinzercation is a collective of parents, teachers, and community members in Southwest Pennsylvania who advocate for improved public education for all children. The organization hosts lectures, community meetings, film showings,

political debates, and meetings with policymakers. All of its activities aim to improve Pennsylvania's public schools and to preserve the Commonwealth's commitment to public education as a civil right and a public good.

Education Voters of Pennsylvania ("EVP") is a non-profit organization that seeks to support and strengthen public education in Pennsylvania. EVP works with parents, community members, other organizations, and local officials to advocate for better education policies and for adequate school resources. EVP has more than 20,000 supporters in Pennsylvania.

Jewish Social Policy Action Network ("JSPAN") is a membership organization of American Jews dedicated to protecting the Constitutional liberties and civil rights of the vulnerable in society. JSPAN supports a comprehensive public education system that accounts for local poverty rates, students with disabilities, students who are homeless or in foster care, and other at-risk populations. JSPAN also supports a new funding system that helps schools meet statewide academic content standards, as well as accountability for schools that fail to meet those standards. JSPAN joins this brief to help ensure that students have the ability to vindicate their constitutional right to a sound public education.

Service Employees International Union Local 32 BJ ("SEIU Local 32 BJ") represents, for purposes of collective bargaining, over 20,000 employees in the state of Pennsylvania. Most of these employees work as custodians, janitors, food

service workers, and security guards for private companies, universities, and school districts.¹ Approximately 6,000 SEIU Local 32 BJ members are directly employed by school districts throughout Pennsylvania. The vast majority of children of SEIU Local 32 BJ members attend public schools throughout Pennsylvania. Many, if not most, attend schools in minority and low income communities throughout the state, in urban and rural school districts.

SEIU local 32 BJ members and their children, because of cuts to education programs and inequitable funding, especially in poorer school districts, are adversely impacted to the manner and degree described in the underlying lawsuit. SEIU Local 32 BJ is dedicated to ensuring that all students in Pennsylvania have an equal opportunity to obtain high quality education. To that end, SEIU Local 32 BJ has made it a priority to advocate for adequate and equitable educational funding of public schools. In particular, SEIU Local 32 BJ has lobbied for adequate funding in the state legislature and organized demonstrations protesting state cuts in education funding.

¹ SEIU Local32 BJ itself represents over 140,000 workers. The international union with which it is affiliated represents over 2 million people nationally.

PRELIMINARY STATEMENT

Amici curiae Public Citizens for Children and Youth, Education Law Center, Pennsylvania Association of School Nurses and Practitioners, Education Matters in the Cumberland Valley, Yinzercation, Education Voters, Jewish Social Policy Action Network, and Service Employees International Union Local 32 BJ respectfully submit this brief to address the central issues raised in this appeal.

First, the Pennsylvania General Assembly (“General Assembly”) has enacted clear, substantive education standards to determine whether the State has fulfilled its constitutional duty to provide a “thorough and efficient” public education to the Commonwealth’s school children. In light of these standards, both of the Petitioners’ challenges—under the Pennsylvania Constitution’s Education Clause and the Equal Protection Clause—are justiciable in accordance with Pennsylvania precedent. Other state courts have similarly ruled that challenges to unconstitutional education are justiciable when such legislative standards have been enacted.

Second, a growing body of research shows a direct correlation between adequate education funding and improved student performance. These studies support the conclusion—one that the General Assembly itself has arrived at—that schools with adequate funding and essential resources can offer all students the opportunity to achieve the State’s legislatively enacted education standards.

ARGUMENT

I. THE PETITIONERS' CLAIMS ARE JUSTICIABLE

The General Assembly has enacted clear, substantive education standards that the judiciary can use to assess whether the state has fulfilled its constitutional duty to provide a “thorough and efficient” education to the Commonwealth’s public school children. As explained below, Petitioners’ challenges to the State’s glaring failure to provide the funding necessary to deliver the State’s substantive education standards, in violation of both the Education Clause and Equal Protection Clause of the Pennsylvania Constitution, are justiciable under this Court’s precedent. Other state courts, faced with similar constitutional challenges, have similarly concluded that such challenges should be adjudicated.

A. The General Assembly Has Enacted Substantive Education Standards for Determining Whether the Commonwealth Has Fulfilled its Constitutional Duties Under the Education Clause

Over the past sixteen years, the General Assembly has adopted detailed, content-based academic and performance requirements for all Pennsylvania public schools and students. These substantive education standards enable the Court to evaluate and rule on whether the Commonwealth has failed to fulfill its constitutional mandate, as alleged in Petitioner’s complaint. Article III, § 14 of the Pennsylvania Constitution—the Education Clause—requires the General Assembly to “provide for the maintenance and support of a thorough and efficient system of

public education” in Pennsylvania. *See* PA. CONST. art. III, § 14. As this Court has made clear, the Education Clause gives the General Assembly broad authority over the day-to-day operation of the Commonwealth’s public schools. *See Teachers’ Tenure Act Cases*, 197 A. 344, 352 (Pa. 1938). This power extends to everything from “contracts bearing upon education” to “school policy” and the “scope of educational activity”—in short, any area “directly related to the maintenance of a ‘thorough and efficient system of public schools.’” *Id.*

In furtherance of its obligation under the Education Clause, the General Assembly has prescribed—for the first time—substantive education standards for implementation in all of Pennsylvania’s public schools. In 1999, the General Assembly passed a comprehensive set of statewide academic content standards, aiming “to facilitate the improvement of student achievement and to provide parents and communities a measure by which school performance can be determined.” 22 PA. CODE § 4.2. Since then, under the direction and authority of the General Assembly, the Pennsylvania State Board of Education has promulgated statewide academic standards for every major content area, requiring local districts and schools to conform their curriculum to the State standards. These curriculum standards cover instruction from kindergarten through twelfth grade. Thus, the General Assembly, by adopting and prescribing content-based standards, has expressly defined what public-school students in Pennsylvania should learn at

every level of their schooling.

The State’s content-based standards provide a precise and detailed roadmap of the required educational program. Chapter Four of the Pennsylvania Code—also enacted in 1999—prescribes “[w]hat a student should know and be able to do.” 22 PA. CODE §§ 4.2, 4.3. The Code sets out achievement benchmarks for each grade level, specifying the skills and knowledge that students must show to be proficient in every area of the curriculum. Other State regulations, authorized by the General Assembly, impose strict requirements on school resources, personnel, and instruction. *See, e.g.*, 22 PA. CODE §§ 4.21(e), 4.21(f), 4.22(c), 4.23(d). These requirements are designed to ensure that the State’s public school students meet the legislature’s academic content standards. *Id.*

The State has also established comprehensive assessments to measure student achievement of the content-based standards and to hold local districts and schools accountable for student performance. The State has made clear that regular testing is the touchstone “[against] which school performance can be determined” in the Pennsylvania education system. *See* 22 PA. CODE §§ 4.2; 4.51(a)(2), (3). The State Code, for example, requires each school district to design a local assessment system to “[d]etermine the degree to which students are achieving [state] academic standards”; districts in which students are not reaching the standards must then use these assessments to “improve curriculum” and “provide

assistance to students not attaining [state] academic standards.” 22 PA. CODE §§ 4.52(a)(1)-(2). The State has also established the PSSA Exams, a comprehensive statewide assessment system to “[d]etermine the degree to which school programs enable students to attain proficiency of [state] academic standards” and to “[p]rovide information to ... the General Assembly ... on how effective schools are in promoting and demonstrating student proficiency of [state] academic standards.” 22 PA. CODE §§ 4.51(a)(2), (3).

Graduating students must also pass the Keystone Exams, a set of annual statewide tests that cover every major academic content area. Crucially, the State has recently linked student performance on all three assessments—PSSA Exams, local assessments, and the Keystone Exams—to performance evaluations for teachers, principals, and administrators. *See* PUBLIC ACT 2012-82 (2011 Pa. H.B. 1901), 24 P.S. § 11-1123. Taken together, these tests are designed to provide ascertainable benchmarks to assess, against the State’s substantive academic standards, whether the Commonwealth’s public school students are receiving a thorough and efficient education as required under the Education Clause.

These legislatively prescribed content, performance, and accountability standards not only provide the General Assembly with clear benchmarks to assess whether the system is thorough and efficient. They also give the *judiciary* concrete, practical criteria for evaluating the Petitioners’ claim in this case—

whether the General Assembly is providing Pennsylvania’s schools sufficient funding and resources to give all school children the opportunity to achieve the academic standards mandated by the State. There can be no doubt that, with the adoption and implementation of academic content and performance standards since 1999, the General Assembly has established actual standards by which this judiciary can evaluate Petitioner’s claims under the Education Clause. These standards were purposely designed to define the content and measure the performance of the State’s public schools, enacted to fulfill the Education Clause’s “positive mandate” that the General Assembly maintain and support a thorough and efficient public- education system. *See* PA. HOUSE LEG. J., Jan. 5, 1999 (remarks of Democratic Floor Leader H. William DeWeese) (explaining that Chapter Four’s content-based standards aid the legislature in meeting “our constitutional mandate”).

Thus, the State’s content and performance standards, established by the General Assembly in furtherance of their constitutional obligation, serve as the substantive baseline for the “thorough and efficient” system of public education required by the Pennsylvania Constitution. The State’s comprehensive academic requirements, along with its robust assessment methods, provide the courts with manageable standards to adjudicate Petitioner’s Education Clause claims.

B. State Courts Have Relied on Substantive Standards to Adjudicate Claims of Unconstitutional Education

Other appellate courts throughout the country have held that claims of educational deprivation under their state constitutions are justiciable by relying on substantive content and performance standards similar to those adopted by the General Assembly in Pennsylvania.

These decisions by fellow state supreme courts confirm that a court can use “standards enunciated by the legislature” to meet the court’s duty to “interpret[] the Constitution and of safeguard[] the basic right[]” of sound public education. *Unified Sch. Dist. No. 229 v. State*, 885 P.2d 1170, 1174, 1186 (Kan. 1994); *see also Abbott v. Burke*, 693 A.2d. 417, 427 (N.J. 1997) (recognizing the “substantial efforts of the coordinate branches” to establish an education system “founded on standards that define the substantive meaning of education” and “provide for measures of educational performance and achievement”).

Many courts across the country have relied on legislatively prescribed education standards to adjudicate claims brought under state education clauses. For example, the Idaho Supreme Court has held that its “duty to define the meaning” of the state education clause had “been made simpler for this Court because ... the government has already promulgated educational standards pursuant to the legislature’s directive.” *Idaho Schs. for Equal Educ. Opportunity*

v. *State*, 976 P.2d 913, 919 (Idaho 1998).

The Supreme Court of North Carolina similarly invoked the “[e]ducational goals and standards adopted by the legislature” in determining whether the state satisfied its constitutional obligation. *Leandro v. State*, 488 S.E.2d 249, 259 (N.C. 1997). Likewise, the Colorado Supreme Court “rel[ie]d on the legislature’s own pronouncements concerning the meaning of [the] ‘thorough and uniform’ system of education” guaranteed by the state constitution. *Lobato v. People*, 218 P.3d 358, 374-75 (Colo. 2009). And the Maryland Court of Appeals ruled that the Legislature’s “comprehensive statewide qualitative standards” were reasonable guidelines for courts to use in determining whether the state has “provid[ed] a thorough and efficient public school education” in compliance with the state constitution. *Hornbeck v. Somerset Cnty. Bd. of Educ.*, 458 A.2d 758, 780 (Md. 1983).

This approach has also been adopted by the highest courts in Kansas, *Montoy v. State*, 120 P.3d 306, 309 (Kan. 2005), New Jersey, *Abbott v. Burke*, 693 A.2d at 427, and West Virginia, *Pauley v. Kelly*, 255 S.E.2d 859, 878 (W.Va.1979) (giving “great weight” to “legislatively established standards” when interpreting the state’s education clause). These and other courts have held that content-based standards give substantive meaning to the broader guarantees in the

constitutional text. The Washington Supreme Court, for example, noted that standards can offer “substantive content to ... the broad educational concepts” contained in the constitution’s provisions. *McCleary v. State*, 269 P.3d 227, 247 (Wash. 2012). And the Wyoming Supreme Court has ruled that the legislature’s broad “constitutional duty” over public education involved “defin[ing] and specify[ing] what that [duty] is.” *Campbell Cnty. Sch. Dist. v. State*, 907 P.2d 1238, 1279 (Wyo. 1995); *see also Abbott v. Burke*, 693 A.2d at 428 (holding that the standards are “a reasonable legislative definition of a constitutional thorough and efficient education”).

Courts have also noted that this approach preserves the legislature’s primary constitutional authority to maintain and support a state’s public education system, while ensuring that the judiciary serves its traditional role as well. The judiciary accords proper respect to a state’s legislature by deferring to a legislature’s own definition of an adequate education in ruling that legislatively prescribed standards engraft enforceable standards onto constitutional mandates. *See, e.g., Idaho Schs. for Equal Educ. Opportunity*, 976 P.2d at 919. The Wisconsin Supreme Court, for instance, interpreted the education clause in Wisconsin’s Constitution by “grounding [its interpretation] in statutes” and “defer[ring] here to the legislature’s wisdom” in choosing the constitutional

requirements of a sound education. *Vincent v. Voight*, 614 N.W.2d 388, 407 (Wisc. 2000). Judicial deference to legislatively prescribed education standards, therefore, reflects that “the people have reposed in [the legislature] ... [the] authority and responsibility for the school system.” *Pauley*, 255 S.E.2d at 878.

This is precisely what Petitioners ask the Court to do in this case and what, *amici curiae* respectfully submit, the Court should allow for here: the judiciary should defer to, but enforce, the legislatively-prescribed standards that give meaning to the Education Clause, as many other state appellate courts have ruled in the face of similar legislatively- prescribed standards.

C. Other States Have Long Held That Public-Education Challenges Are Justiciable

Dozens of other state high courts have also reaffirmed their judiciary’s role in vindicating constitutional education guarantees to children. These decisions all conclude that courts are well-suited to determine whether a public education system meets constitutional standards.² The Kentucky Supreme Court put it aptly:

² Decisions have come from Arkansas, *Lake View Sch. Dist. No. 25 v. Huckabee*, 91 S.W.3d 472 (Ark. 2002); Colorado, *Lobato v. People*, 218 P.3d 358 (Colo. 2009); Connecticut, *Conn. Coal. for Justice in Educ. Funding, Inc. v. Rell*, 990 A.2d 206 (Conn. 2010); Idaho, *Idaho Schs. for Equal Educ. Opportunity v. State*, 976 P.2d 913 (Idaho 1998); Kansas, *Gannon v. State*, 319 P.3d 1196 (Kan. 2014); Kentucky, *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186 (Ky. 1989); Maryland, *Hornbeck v. Somerset Cnty. Bd. of Educ.*, 458 A.2d 758 (Md. 1983); Massachusetts, *McDuffy v. Sec’y of the Exec. Office of Educ.*, 615 N.E.2d 516 (Mass. 1993); Montana, *Columbia Falls Elementary Sch. Dist. No. 6 v. State*, 109 P.3d 257 (Mont. 2005); New Hampshire, *Claremont Sch. Dist. v. Governor*, 703 A.2d

“Courts may, should, and have involved themselves in defining the standards of a constitutionally mandated educational system.” *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 210 (Ky. 1989).

These decisions, like those described in Part I.B above, make it clear that courts have the “final obligation to guard, enforce, and protect” their states’ constitutional education requirements. *Columbia Falls Elementary Sch. Dist. No. 6 v. State*, 109 P.3d 257, 261 (Mont. 2005). To find otherwise, they conclude, “would be a complete abrogation of our judicial responsibility” and would do a “severe disservice to the people.” *Lake View Sch. Dist. No. 25 v. Huckabee*, 91 S.W.3d 472, 484 (Ark. 2002). As the New York Court of Appeals held, this judicial responsibility is the only way to ensure that “the Legislature ... fulfill[s] [its] constitutional mandate” to provide a sound education. *Hussein v. State*, 973 N.E.2d 752, 754 (N.Y. 2012).

Moreover, these decisions have found that challenges asserting a deprivation of education to a state’s schoolchildren are justiciable even when a

1353 (N.H. 1997) (Claremont II); New Jersey, *Abbott v. Burke*, 20 A.3d 1018 (N.J. 2011); New York, *Hussein v. State*, 973 N.E.2d 752, (N.Y. 2012); North Carolina, *Leandro v. State*, 488 S.E.2d 249 (N.C. 1997); Ohio, *DeRolph v. State*, 677 N.E.2d 733 (Ohio 1997); Tennessee, *Tenn. Small Sch. Sys. v. McWherter*, 851 S.W.2d 139 (Tenn. 1993); Texas, *Neeley v. W. Orange-Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746 (Tex. 2005); Vermont, *Brigham v. State*, 889 A.2d 715 (Vt. 2005); Washington, *McCleary v. State*, 269 P.3d 227 (Wash. 2012); West Virginia, *Pauley v. Kelly*, 255 S.E.2d 859 (W.Va. 1979); Wisconsin, *Vincent v. Voight*, 614 N.W.2d 388 (Wisc. 2000); and Wyoming, *Campbell Cnty. Sch. Dist. v. State*, 907 P.2d 1238 (Wyo. 1995) (*Campbell Cnty.*).

constitution’s text gives “a directive to the Legislature.” *Columbia Falls Elementary Sch. Dist. No. 6*, 109 P.3d at 260. Once “the [l]egislature has acted ... [to] execute[.]” an education clause, “courts can determine whether that enactment fulfills the Legislature’s constitutional responsibility.” *Id.* (quoting *City of Boerne v. Flores*, 521 U.S. 507 (1997)). When the “question becomes whether the legislature has actually performed its duty [under the education clause], ... [it] is left to the courts to answer.” *Gannon v. State*, 319 P.3d 1196, 1226 (Kan. 2014). As these courts make clear, the separation-of-powers principle *demand*s that courts hear public-education challenges: “[t]o allow the General Assembly ... to decide whether its [own] actions are constitutional,” the Kentucky Supreme Court held, “is literally unthinkable.” *Rose*, 790 S.W.2d at 209.

D. Adjudicating Petitioners’ Claims Accords With This Court’s Prior Decisions in *Danson* and *Marrero*

As reflected by the approach taken in the overwhelming precedent from other states, ruling that Petitioners’ claims are justiciable is correct and fully in accord with the Court’s decisions in *Danson v. Casey*, 399 A.2d 360 (Pa. 1979), and *Marrero v. Commonwealth*, 739 A.2d 110 (Pa. 1999). In *Danson*, the Court dismissed an education-funding complaint because the Philadelphia School District failed to allege students were being deprived of an “adequate” education. In *Marrero*, the Supreme Court also dismissed an education funding complaint,

citing the absence of standards by which the judiciary could adjudicate the claim.

But, since this Court ruled in *Marrero*, the pertinent context for assessing the justiciability of education funding claims has changed dramatically. The General Assembly's detailed content and performance standards create a clear, judicially manageable framework for evaluating the Petitioner's claim that the State has failed to provide the resources to give school children the opportunity to achieve the State's substantive education standards. In light of the General Assembly's content-based standards, any impediments to justiciability that existed under this Court's precedent have now been removed.

In 1999, the Court in *Marrero* observed that the "lack of judicially manageable standards" would force the Court to "mak[e] an initial policy determination" about the substantive requirements of the Education Clause. 739 A.2d at 113. That sort of determination, the Court went on, is "clearly [one] of legislative ... discretion." *Id.* (emphasis added). Indeed, the Education Clause gives the General Assembly authority to take action to maintain and support a thorough and efficient system of public education. But since *Marrero*, the General Assembly has properly exercised its constitutional obligation by enacting a substantive and detailed framework by which this Court can assess Petitioner's claims of unconstitutional under-funding and resource-deprivation in Pennsylvania's schools. Adjudicating Petitioners' claims would therefore not

impose a “*judicial view*” of the Education Clause’s requirements, but would simply enforce a *legislative* one. And far from “abrogat[ing] or intrud[ing] upon” the legislature, the Court would appropriately assess Petitioners’ claim based on the General Assembly’s own definition of a “thorough and efficient” system of education. *Id.*; *Danson*, 399 A.2d at 366 (emphasis added) (internal quotation marks omitted).

The General Assembly’s promulgation of substantive education standards also obviates the Court’s concern in *Danson* that courts would be compelled to use “expenditures ... as the exclusive yardstick of educational quality.” *Danson*, 399 A.2d at 366. In *Danson*, the Court remarked on the total absence of workable standards for education challenges in 1979, and the Court refused to “adopt ... the rigid rule that each pupil must receive the same dollar expenditures.” *Id.* However, the General Assembly has now prescribed “rigorous *academic* standards and assessments,” as a metric, emphasizing that the Commonwealth should promote programs that give students necessary “concepts, knowledge, and skills.” 22 PA. CODE. §§ 4.2, 4.3 (emphasis added); *see also id.* § 4.3 (defining “assessment” as a “measurement ... that capture[s] *student understanding* ... of each content area”) (emphasis added).

Petitioners allege that the State has failed to provide the funding for the educational resources essential for children across the state to achieve the General

Assembly's substantive education standards. Thus, quite unlike the claim before the Court in *Danson*, this is a claim that, in the wake of the General Assembly's enactment of concrete and substantive educational standards, is now suited to judicial evaluation. As other state supreme courts have concluded in other states, it is the *judiciary's* obligation to make this determination and enforce the Constitution.

II. RESEARCH SHOWS AND CASE LAW ACKNOWLEDGES THAT ADEQUATE EDUCATIONAL FUNDING IMPROVES OUTCOMES

The importance of this lawsuit to the next generation of Pennsylvanians cannot be overemphasized. Studies have consistently shown a strong correlation between adequate funding for education and student performance. And as a matter of fact and common sense, courts throughout the nation have recognized that academic outcomes improve with fairly distributed resources, well-trained teachers, and quality facilities. All of these things “take[] money.” *Lake View Sch. Dist. No. 25*, 91 S.W.3d at 498-99.

These findings support the Petitioners' central argument: the Commonwealth must provide the funding and resources necessary for all Pennsylvania schoolchildren to have a meaningful opportunity to meet the Commonwealth's own academic standards.

A. Academic Studies Show that Adequate School Funding Leads to Improved Academic Performance

Research has consistently found a strong relationship between educational resources and academic achievement. As one expert noted, “a sizeable and growing body of rigorous empirical literature” shows “that state school finance reforms can have *substantial positive effects* on student outcomes.” See Bruce D. Baker, *Revisiting the Age-Old Question: Does Money Matter in Education?*, The Albert Shanker Inst. 14 (2012) (emphasis added). Decades of research on the links between education spending and academic performance has confirmed a simple fact: “Money matters.” *Id.* at iv.

In a landmark longitudinal analysis of school finance changes in 28 states from 1970 through 2010, researchers asked how these changes affected the long-term outcomes of children. See C. Kirabo Jackson, *et al.*, *The Effect of School Finance Reforms on the Distribution of Spending, Academic Achievement, and Adult Outcomes* (National Bureau of Economic Research Working Paper 2014). With the release of newly available data, these researchers were able to conduct a detailed analysis of how changes in funding affect changes in educational outcomes. The results show that, for low-income children, “a twenty percent increase in per-pupil spending ... for all 12 years of public school is associated with [about an] additional year of completed education,” which significantly increased

the likelihood of high school graduation and education beyond graduation.

Increased funding was also shown to produce “25 percent higher earnings and a 20 percentage-point reduction in the annual incidence of poverty in adulthood.” *Id.* at 5.

Central to this study is the proof of causation, as it presents several “patterns that indicate that these improvements reflect the ... effect of school spending.” *Id.* Improvements are “larger with larger spending increases,” and “the timing of improvements in outcomes track the timing of the increases in spending.” *Id.* at 35. The researchers conclude “based on the consistent pattern of these results ... these impacts indeed reflect the causal effect of school spending” and “spending increases only improve educational outcomes for those who are exposed during their school-age years.” *Id.* Finally, they answer the question whether increased school spending can improve educational and lifetime outcomes of disadvantaged children: “Our findings show that it can.” *Id.* at 44. This addition to the evidence on the productivity of education spending is both groundbreaking because the data base is so extensive and dramatic because the effects have been shown to be so large.

Experience in several states supports this conclusion. In 1998, for example, the Massachusetts legislature responded to public-education challenges by providing additional education funds. The results were staggering: in the six years

following funding reform, the failure rate of tenth graders taking statewide exams dropped from 45% to 15% in math and 34% to 11% in English. Paul Reville, *The Massachusetts Case: A Personal Account*, Symposium on “Equal Educational Opportunity: What Now?” Teachers College, Columbia University, Nov. 12-13, 2007 (Working Paper); see also Michael A. Rebell, *What are the Limits and Possibilities of Legal Remedies?: Poverty, “Meaningful” Educational Opportunity, and the Necessary Role of the Courts*, 85 N.C. L. Rev. 1467, 1527 (2007).

A study found that the increased funding in Massachusetts lifted fourth-grade math, reading, science, and social studies test scores by about half of one standard deviation, after only a few years. See Jonathan Guryan, *Does Money Matter? Regression-Discontinuity Estimates from Education Finance Reform in Massachusetts* 24 (National Bureau of Economic Research, Working Paper No. 8269, May 2001); see also Bruce D. Baker & Kevin G. Weiner, *School Finance and Courts: Does Reform Matter, and How Can We Tell?* 113 TCHRS. C. REC. 8, 10 (2011). Another showed that Massachusetts’s education reform successfully raised the achievement levels of students in the previously low-spending school districts. See Thomas Downs, Jeffrey Zabel, & Dana Ansel, *Incomplete Grade: Massachusetts Education Reform at 15*, MASS INC, 5-6 (May 2009).

New Jersey has had a similar experience. There, court-mandated education-

financing reforms lifted the level of academic achievement to one of the highest in the country. One particular study, which focused on eleventh-grade assessments in New Jersey, showed that increased education spending in school districts improved students' test scores by one-fifth to one-quarter of a standard deviation. *See* Alexandra M. Resch, *Three Essays on Resources in Education*, U. MICH. DEP'T PUB. POL'Y & ECON., 1 (2008).

Other states have achieved noticeable boosts in student performance after reforming public education funding. Following a 1992 court order that directed the Kansas legislature to devise a new funding system, the probability that students from low-wealth districts would go on to postsecondary education rose by at least five percent. *See* Bruce D. Baker & Kevin G. Weiner, *School Finance and Courts: Does Reform Matter, and How Can We Tell?* 113 TCHRS. C. REC. at 9. Another study found that education-finance reforms in Vermont “dramatically reduced dispersion in education spending” and made “student performance ... more equal.” *Id.*

Similarly, several researchers studied national reading comprehension tests following the Kentucky legislature's court-ordered increase in school funding; their studies showed that impoverished students in Kentucky dramatically outscored students-by up to seven percentage points-from similar backgrounds in other states. *See* Susan Perkins Weston & Robert F. Sexton, *Substantial and Yet*

Not Sufficient: Kentucky's Effort to Build Proficiency for Each and Every Child,
Symposium on "Equal Educational Opportunity: What Now?" Teachers College,
Columbia University, Nov. 12-13, 2007 (Working Paper).

B. Courts Have Widely Recognized That Adequate School Funding Improves Educational Results

At least twenty-nine state courts have determined, in ruling on the merits of claims, that education-funding levels are key to academic results. *See* Michael A. Rebell, *What are the Limits and Possibilities of Legal Remedies?: Poverty, "Meaningful" Educational Opportunity, and the Necessary Role of the Courts*, 85 N.C. L.Rev. at 1484-85. For example, the New Jersey Supreme Court found that

under the present [funding] system the evidence compels but one conclusion: the poorer the district and the greater its need, the less the money available, and the worse the education.

Abbott v. Burke, 575 A.2d 359, 363 (N.J. 1990). Addressing an argument similar to that made here by the State, the court went on to reject

the argument ... that funding should not be supplied because it may be mismanaged and wasted. Money can make a difference if effectively used, it can provide the students with an equal educational opportunity, a chance to succeed. They are entitled to that chance, constitutionally entitled. They have the right to the same educational opportunity that money buys for others.

Id. Similarly, the Arkansas Supreme Court rejected as "implausible" Arkansas' argument

that more money spent on education does not correlate to better student

performance.... The State’s argument is farfetched in this court’s opinion. We are convinced that motivated teachers, sufficient equipment to supplement instruction, and learning in facilities that are not crumbling or overcrowded, all combine to enhance educational performance.... All of that takes money.

Lake View Sch. Dist. No. 25, 91 S.W.3d at 498-99.

In a concurring opinion, the Chief Justice of the Arizona Supreme Court summarized the issue:

[L]ogic and experience also tell us that children have a better opportunity to learn biology or chemistry, and are more likely to do so, if provided with laboratory equipment for experiments and demonstrations; that children have a better opportunity to learn English literature if given access to books; that children have a better opportunity to learn computer science if they can use computers, and soon through the entire state-prescribed curriculum.... It seems apparent to me, however, that these are inarguable principles. If they are not, then we are wasting an abundance of our taxpayers’ money in school districts that maintain libraries and buy textbooks, laboratory equipment, and computers.

Roosevelt Elementary Sch. Dist. No. 66 v. Bishop, 877 P.2d 806, 822 (Ariz. 1994)

(C.J. Feldman, concurring).

Many other courts have reached the same conclusion. New York’s highest court, the Court of Appeals, noticed “the ... ‘causal link’ between the present funding system and the poor performance of City schools” and recognized that “increased funding can provide better teachers, facilities and instrumentalities of learning.” *Campaign for Fiscal Equity, Inc. v. State*, 801 N.E.2d 326, 340 (N.Y. 2003). The Texas Supreme Court observed that “[t]he amount of money spent on

a student's education has a real and meaningful impact on the educational opportunity offered that student," *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391, 393 (Tex. 1989), while the Tennessee Supreme Court saw a "direct correlation between dollars expended and the quality of education a student receives." *Tenn. Small Sch. Sys.*, 851 S.W.2d at 141.

The Supreme Courts of Vermont and California both similarly found a clear link between education spending and academic achievement. *Brigham v. State*, 692 A.2d 384, 390 (Vt. 1997); *Serrano v. Priest*, 487 P.2d 1241, 1253 n.16 (Cal. 1971). As one state court judge bluntly put it, "[o]nly a fool would find that money does not matter." Michael A. Rebell, *What are the Limits and Possibilities of Legal Remedies?: Poverty, "Meaningful" Educational Opportunity, and the Necessary Role of the Courts*, 85 N.C. L. Rev. at 1479.

In short, Petitioners have asserted vitally important claims in this matter, which the Court should rule are justiciable and thereafter remand for the Commonwealth Court to carry out its judicial duty to adjudicate their merits.

CONCLUSION

For the foregoing reasons, *amici curiae* urge the Court to reverse the Commonwealth Court's order dismissing the Petition and rule that the Petitioners' claims are justiciable. The issues raised by this action are too important for the judiciary to abdicate its duty.

Dated: September 18, 2015
Pittsburgh, Pennsylvania

Respectfully submitted,

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