

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Docket No. 587 MD 2014

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

v.

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

BRIEF OF *AMICI CURIAE* PUBLIC CITIZENS FOR CHILDREN AND
YOUTH, EDUCATION LAW CENTER, THE PENNSYLVANIA
ASSOCIATION OF SCHOOL NURSES AND PRACTITIONERS,
EDUCATION MATTERS IN THE CUMBERLAND VALLEY,
YINZERCATION, EDUCATION VOTERS OF PENNSYLVANIA,
JEWISH SOCIAL POLICY ACTION NETWORK, AND SERVICE
EMPLOYEES INTERNATIONAL UNION LOCAL 32 BJ,
IN SUPPORT OF PETITIONERS.

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
STATEMENTS OF INTERESTS OF <i>AMICI CURIAE</i>	vii
PRELIMINARY STATEMENT.....	1
ARGUMENT	2
I. THE PETITIONERS’ CLAIMS ARE JUSTICIABLE	2
A. The General Assembly Has Enacted Substantive Education Standards for Determining Whether the Commonwealth Has Fulfilled its Constitutional Duties Under the Education Clause.....	2
B. State Courts Have Relied on Substantive Standards to Adjudicate Claims of Unconstitutional Education	7
C. Other States Have Long Held That Public-Education Challenges Are Justiciable	10
D. Adjudicating Petitioners’ Claims Accords With the Pennsylvania Supreme Court’s Prior Decisions in <i>Danson and Marrero</i>	12
II. RESEARCH SHOWS AND CASE LAW ACKNOWLEDGES THAT ADEQUATE EDUCATIONAL FUNDING IMPROVES OUTCOMES.....	15
A. Academic Studies Show that Adequate School Funding Leads to Improved Academic Performance.....	15
B. Courts Have Widely Recognized That Adequate School Funding Improves Educational Results	18
CONCLUSION.....	21

TABLE OF AUTHORITIES

CASES	PAGE
<i>Abbott v. Burke</i> , 575 A.2d 359 (N.J. 1990).....	vii, 18
<i>Abbott v. Burke</i> , 693 A.2d 417 (N.J. 1997).....	7, 8, 9
<i>Abbott v. Burke</i> , 20 A.3d 1018 (N.J. 2011).....	10
<i>Brigham v. State</i> , 692 A.2d 384 (Vt. 1997).....	20
<i>Brigham v. State</i> , 889 A.2d 715 (Vt. 2005).....	10
<i>Campaign for Fiscal Equity v. State</i> , 801 N.E.2d 326 (N.Y. 2003).....	19
<i>Campbell Cnty. Sch. Dist. v. State</i> , 907 P.2d 1238 (Wyo. 1995).....	9, 10
<i>City of Boerne v. Flores</i> , 521 U.S. 507 (1997).....	11
<i>Claremont Sch. Dist. v. Governor</i> , 703 A.2d 1353 (N.H. 1997).....	10
<i>Columbia Falls Elementary Sch. Dist. v. State</i> , 109 P.3d 257 (Mt. 2005).....	10, 11
<i>Conn. Coal. for Justice in Educ. Fin. v. Rell</i> , 990 A.2d 206.....	11
<i>Danson v. Casey</i> , 399 A.2d 360 (Pa 1979).....	12, 13, 14

DeRolph v. State,
677 N.E.2d 733 (Ohio 1997)..... 10

Edgewood Indep. Sch. Dist. v. Kirby,
777 S.W.2d 391 (Tex. 1994)..... 20

Gannon v. State,
319 P.3d 1196 (Kan. 2014)..... 10, 11

Hornbeck v. Somerset Cnty. Bd. Educ.,
458 A.2d 758 (Md. 1983) 8, 10

Hussein v. State,
973 N.E.2d 752 (N.Y. 2012)..... 10, 11

Idaho Schools for Equal Educational Opportunity v. State,
976 P.2d 913 (Idaho 1998)..... 7, 9, 10

Lake View Sch. Dist. No. 25 v. Huckabee,
91 S.W.3d 472 (Ark. 2002)..... 10, 11, 15, 19

Leandro v. State,
488 S.E.2d 249 (N.C. 1997)..... 8, 10

Lobato v. People,
218 P.3d 358 (Colo. 2009)..... 8, 10

Marrero v. Commonwealth,
739 A.2d 110 (Pa. 1999)..... 12, 13

McCleary v. State,
269 P.3d 227 (Wash. 2012)..... 8, 10

McDuffy v. Secretary of the Executive Office of Education,
615 N.E.2d 516 (Mass. 1993)..... 10

Montoy v. State, 120 P.3d 306 (Kan. 2005)8

Neeley v. W. Orange-Cove Consol. Indep. Sch. Dist.,
176 S.W.3d 746 (Tex. 2005)..... 10

Pauley v. Kelly,
255 S.E.2d 859 (W.Va. 1979)..... 8, 9, 10

Roosevelt Elementary Sch. Dist. No. 66 v. Bishop,
877 P.2d 806 (Ariz. 1994)..... 19

Rose v. Council for Better Educ., Inc.,
790 S.W.2d 186 (Ky. 1989)..... 10, 12

Serrano v. Priest,
487 P.2d 1241 (Cal. 1971) 20

Teachers' Tenure Act Cases, 197 A. 344 (Pa. 1938).....3

Tenn. Small Sch. Sys. v. McWherter,
851 S.W.2d 139 (Tenn. 1993)..... 10, 20

Unified Sch. Dist. No. 229 v. State,
885 P.2d 1170 (Kan. 1994).....7

Vincent v. Voight,
614 N.W.2d 388 (Wisc. 2000)..... 9, 10

STATUTES & CONSTITUTIONS

PA. CONST. art. III, § 14..... 2, 3

PUBLIC ACT 82, 24 P.S. § 11-1123.....5

22 PA. CODE § 4.2 3, 4, 14

22 PA. CODE. § 4.34

22 PA. CODE §§ 4.214

22 PA. CODE. 4.515

22 PA. CODE §§ 4.525

OTHER AUTHORITIES

PA. HOUSE LEG. J., Jan. 5, 1999 (remarks of Democratic Floor Leader
H. William DeWeese) 13

BRUCE D. BAKER, *Revisiting the Age-Old Question: Does Money
Matter in Education?*, THE ALBERT SHANKER INST. (2012)..... 15

Bruce D. Baker & Kevin G. Welner, *School Finance and Courts:
Does Reform Matter, and How Can We Tell?* 113 TCHRS. C. REC.
(2011)..... 17

Thomas Downs, Jeffrey Zabel, & Dana Ansel, *Incomplete Grade:
Massachusetts Education Reform at 15*, MASSINC, 5-6 (May
2009). 17

Jonathan Guryan, *Does Money Matter? Regression-Discontinuity
Estimates from Education Finance Reform in Massachusetts* 24
(NAT’L BUREAU OF ECON. RES., Working Paper No. 8269, May
2001) 21

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, 1479
(2007)..... 16, 18, 20

Alexandra M. Resch, *Three Essays on Resources in Education*, U.
MICH. DEP’T PUB. POL’Y & ECON. (2008) 16

Susan Perkins Weston & Robert F. Sexton, *Substantial and Yet Not
Sufficient: Kentucky’s Effort to Build Proficiency for Each and
Every Child*, Symposium no “Equal Educational Opportunity:
What Now?” Teachers College, Columbia University, Nov. 12-13,
2007 (Working Paper)..... 18

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)..... 16

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 New Jersey-based non-profit organization established in 1973 to advocate on behalf of public school children for access to an equal and adequate educational opportunity under state and federal laws. ELC represented the plaintiff schoolchildren in *Abbott v. Burke*, 575 A.2d 359 (N.J. 1990), a challenge to the State of New Jersey’s failure to provide a thorough and efficient education under the New Jersey Constitution. ELC serves as co-counsel in *Maisto, et al. v. State of New York*, a pending case asserting a violation of the guarantee of a sound basic education under the New York Constitution for students in high need school districts.

ELC operates Education Justice, a national program to advance education opportunities for children. Education Justice analyzes the right to education in state constitutions, public education finance, essential education programs,

education cost studies, and policies to improve student achievement. *See* EDUCATION JUSTICE, <http://www.educationjustice.org>. ELC, through Education Justice, has participated as *amicus curiae* in constitutional challenges to unconstitutional education in Colorado, Connecticut, Indiana, Kansas, Maryland, and South Carolina.

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 Local 32 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 case.

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 for the judiciary 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 Education Clause and Equal Protection Clause of the Pennsylvania Constitution, are justiciable under Pennsylvania Supreme Court 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—directs 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 the Pennsylvania Supreme 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 on 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 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. [Petition ¶ 101]. 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 education.

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 students should know and be able to do.” 22 PA. CODE § 4.2. 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. [Petition ¶ 106]. 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 schools meet the legislature's 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”; failing districts 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 82, 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 Court 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, serves as the substantive baseline for the "thorough and efficient" system of public education guaranteed by the Pennsylvania Constitution. The State's comprehensive academic requirements, along with its robust assessment methods, provide this Court 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 confirm that a court can use “the standards enunciated by the legislature” to meet its duty to “interpret[] the Constitution and safeguard[] the basic right[]” of sound public education. *Unified Sch. Dist. No. 229 v. State*, 885 P.2d 1170, 1185-87 (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). 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 likewise ruled that the Legislature’s “comprehensive statewide qualitative standards” were reasonable guidelines to determine whether the state has “provid[ed] a thorough and efficient public school education” in compliance with the state constitution. *Hornbeck v. Somerset Cnty. Bd. 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, 1239 (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. 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 v. State*, 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 v. Kelly*, 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 do here: defer to, but enforce,

the legislatively-prescribed standards that give meaning to the Education Clause, as many other state appellate courts have done 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.² These decisions all conclude that courts are well-suited to determine whether a public education system meets constitutional standards. The Kentucky Supreme Court put it aptly: “Courts may, should, and have involved themselves in defining the standards of a constitutionally required education 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. v.*

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, 374-75 (Colo. 2009); Connecticut, *Conn. Coal. for Justice in Educ. Fin. v. Rell*, 990 A.2d 206; Idaho, *Idaho Schs. for Equal Educ. Opportunity v. State*, 976 P.2d 913, 919 (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. Educ.*, 458 A.2d 758, 780 (Md. 1983); Massachusetts, *McDuffy v. Secretary of the Executive Office of Education*, 615 N.E.2d 516 (Mass. 1993); Montana, *Columbia Falls Elementary Sch. Dist. v. State*, 109 P.3d 257 (Mt. 2005); New Hampshire, *Claremont Sch. Dist. v. Governor*, 703 A.2d 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, 259 (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 at 258; 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. I*).

State, 109 P.3d 257, 261 (Mt. 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 constitution’s text gives “a directive to the legislature.” *Columbia Falls Elementary Sch. Dist. v. State*, 109 P.3d 257, 260 (Mt. 2005). Once “the [l]egislature has acted . . . [to] execute[]” an education clause, “courts can determine whether that enactment fulfills the [l]egislature’s constitutional responsibility.” *Columbia Falls Elementary Sch. Dist. v. State*, 109 P.3d 257, 260 (Mt. 2005) (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). To these courts, 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 v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 209 (Ky. 1989).

D. Adjudicating Petitioners’ Claims Accords With the Pennsylvania Supreme 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 Pennsylvania Supreme 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 Supreme 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 over the last sixteen years, 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 may have existed under prior Pennsylvania Supreme Court precedent have now been removed.

In 1999, the Supreme 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. *Marrero v. Commonwealth*, 739 A.2d at 113. That sort of determination, the Court went on, is “clearly [one] of *legislative* . . . discretion.” *Id.* 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 v. Casey*, 399 A.2d at 366 (emphasis added) (internal quotation marks omitted).

The General Assembly's promulgation of substantive education standards also obviates the Supreme Court's concern in *Danson* that courts would be compelled to use "expenditures . . . as the exclusive yardstick of educational quality." *Danson v. Casey*, 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," 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").

Petitioners allege that the State has failed to provide the funding and 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 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. v. Huckabee*, 91 S.W.3d 472, 498-99 (Ark. 2002).

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.

Studies from other states support this conclusion. In New Jersey, 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 assessment tests 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. Alexandra M. Resch, *Three Essays on Resources in Education*, U. MICH. DEP’T PUB. POL’Y & ECON., 1 (2008). Massachusetts has had a similar experience. In 1998, the Massachusetts legislature responded to public-education challenges by providing adequate education funds. The results were staggering: in the six years following funding reform, the failure rate of tenth graders taking the Massachusetts Comprehensive Assessment System 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). One study found that the increased funding lifted fourth-grade math, reading, science, and social studies test scores by

about half of one standard deviation. See Jonathan Guryan, *Does Money Matter? Regression-Discontinuity Estimates from Education Finance Reform in Massachusetts* 24 (NAT'L BUREAU OF ECON. RES., Working Paper No. 8269, May 2001); see also Bruce D. Baker & Kevin G. Welner, *School Finance and Courts: Does Reform Matter, and How Can We Tell?* 113 TCHRS. C. REC. 8, 10 (2011). Another study showed that Massachusetts's education reform successfully raised the achievement levels of students in the previously low-spending school districts. Thomas Downs, Jeffrey Zabel, & Dana Ansel, *Incomplete Grade: Massachusetts Education Reform at 15*, MASSINC, 5-6 (May 2009).

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. Welner, *School Finance and Courts: Does Reform Matter, and How Can We Tell?* 113 TCHRS. C. REC. 9 (2011). Another study found that education-finance reforms in Vermont “dramatically reduced dispersion in education spending” and made “student performance . . . more equal.” *Id.* 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. Susan Perkins Weston & Robert F. Sexton, *Substantial and Yet Not Sufficient: Kentucky’s Effort to Build Proficiency for Each and Every Child*, Symposium no “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, *Poverty, “Meaningful” Educational Opportunity, and the Necessary Role of Courts*, 85 N.C. L. REV. 1467, 1484-85 (2007). 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 the 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 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. v. Huckabee, 91 S.W.3d 472, 498-99 (Ark. 2002).

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 so on 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. The New York 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 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. 1994), while the Tennessee Supreme Court saw a “direct correlation between dollars expended and the quality of education a student receives.” *Tenn. Small Sch. Sys. v. McWherter*, 851 S.W.2d 139, 141 (Tenn. 1993).

The Supreme Courts of Vermont and California both found a clear link between education spending and academic achievement, as well. *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. 1467, 1479 (2007).

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

CONCLUSION

For the foregoing reasons, *amici curiae* urge the Court to deny the motion to dismiss and rule that the Petitioners' claims are justiciable. The issues raised by this action are too important for the judiciary to abdicate its duty.

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Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that two true and accurate copies of the foregoing brief and reproduced record were served on each person identified below by First Class United States Mail, Postage Prepaid, which service satisfies the requirements of Pennsylvania Rule of Appellate Procedure 121, this 24th day of February, 2015:

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CERTIFICATION OF COMPLIANCE WITH WORD COUNT LIMIT

I, Ira M. Karoll, certify that the foregoing Amici Brief complies with the word limit as prescribed by Pa.R.A.P. 2135.

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