IN THE SUPREME COURT OF PENNSYLVANIA

MIDDLE DIVISION

NO. 46 MAP 2015

WILLIAM PENN SCHOOL DISTRICT, ET AL.,

APPELLANTS

V.

PENNSYLVANIA DEPARTMENT OF EDUCATION, ET AL.,

APPELLEES.

Appeal from the Order of the Commonwealth Court No. 587 M.D. 2014, in its original jurisdiction, Entered on April 21, 2015

BRIEF OF APPELLEES MICHAEL C. TURZAI, SPEAKER OF THE HOUSE, AND JOSEPH B. SCARNATI, III, SENATE PRESIDENT PRO TEMPORE

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COUNTERSTATEMENT OF THE QUESTIONS INVOLVED

1. Whether the Commonwealth Court correctly applied this Court's controlling precedent in *Marrero ex rel. Tabalas v. Commonwealth*, 739 A.2d 110 (Pa. 1999) and *Danson v. Casey*, 399 A.2d 360 (Pa. 1979) to hold that the claims asserted by Appellants present nonjusticiable political questions.

2. Whether, in the alternative, the Appellants have failed to state a claim under Article III, Section 32 (the **"Equal Protection Clause"**) of the Pennsylvania Constitution.

COUNTERSTATEMENT OF THE CASE

This Brief is submitted on behalf of Senate President *Pro-Tempore* Joseph B. Scarnati, III and Speaker of the House Michael C. Turzai, in their official capacities (**"Legislative Respondents"**).[1]

Appellants are: (1) certain Pennsylvania public school districts who believe they are underfunded (**"School District Appellants"**); (2) individual parents or guardians of children currently attending public schools within the Commonwealth (**"Individual Appellants"**); and (3) advocacy groups claiming to have members that are adversely affected by Pennsylvania's system for funding public education. The essential allegation of the Appellants' Petition for Review (**"Petition"**) is that

[1] The Pennsylvania Department of Education, Secretary of Education, State Board of Education and Governor are collectively referred to as the **"Executive Branch Respondents."**

Respondents have established "an irrational and inequitable school financing arrangement that drastically underfunds school districts across the Commonwealth and discriminates against children on the basis of the taxable property and household incomes in their district."[2] [Petition, ¶ 1].

Although the Petition is lengthy and contains copious detail about the alleged educational imbalances resulting from Pennsylvania's system for funding education, the vast majority of this detail is not necessary for this Court to resolve the instant appeal. The Petition claims that the system for funding public schools adopted by the General Assembly violates Article III, § 14 of the Pennsylvania Constitution (the **"Education Clause"**), which requires the General Assembly to "provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth." [Petition, ¶ 1]. Appellants also claim that Respondents have violated the Equal Protection Clause, which they interpret to require Respondents to finance the Commonwealth's public education system in a manner that does not irrationally discriminate against a class of children. [*Id.*]

In its 1999 decision in *Marrero,* this Court sustained the Commonwealth's preliminary objections and dismissed as nonjusticiable a substantially identical

[2] Because this case involves a decision sustaining Preliminary Objections, this factual discussion is based upon the well-pleaded facts of the Petition. *See* Pa.R.C.P. 1028(a). Such facts are assumed to be true solely for the purpose of proceedings on the Preliminary Objections.

challenge to Pennsylvania's system for funding public schools. In *Marrero*, like this case, the petitioners contended that the General Assembly violated the Pennsylvania Constitution by adopting a funding system, based largely on local tax revenues, that fails to provide adequate funding for certain school districts (in that case, the Philadelphia School District). 739 A.2d at 16.

In 2006, the General Assembly passed Act 114, which directed the State Board of Education to conduct a comprehensive statewide "costing-out" study to determine the "basic cost per pupil to provide an education that will permit a student to meet the State's academic standards and assessments." [Petition, ¶ 3]. Beginning in 2011, Respondents "abandoned" their previous funding formula, reduced funding to districts and passed legislation that severely restricts local communities from increasing local funding while the cost of meeting state academic standards continues to rise. [*Id*]. Appellants allege that these funding cuts have had a "devastating" effect on students, school districts (especially less affluent school districts), teachers, and "the future of the Commonwealth." [*Id.* at ¶ 4]. Appellants contend that more than 300,000 of the approximately 875,000 students tested in Pennsylvania are receiving an "inadequate education" and are unable to meet state academic standards.[3] [*Id.*]

[3] Although Appellants repeatedly contend that inability to pass state Keystone Exams will leave a high percentage of Pennsylvania's students unable to meet the high school graduation requirements, they admit that such **[continued on page 4]**

Appellants assert that the overall levels of education funding, and high dependence on local taxes, have created "gross funding disparities" among school districts, which disproportionately harm children residing in districts with low property values and incomes. [Petition, ¶ 7]. Appellants allege that total education expenditures per student in school districts with low property values and incomes are much lower than per student expenditures in districts with high property values and incomes. [*Id.* at ¶ 8].

Appellants further contend that many low-wealth districts have higher tax rates than property-rich school districts and, therefore, the difference in funding cannot be explained by "tax effort." [*Id.* ¶ 9]. Appellants concede that "the state has made some effort to close that gap," contributing twice as much per student to some less affluent school districts, but argue that even the higher level of per-student Commonwealth funding leaves lower-wealth districts "with less than half the combined state and local funding" of wealthier districts, such as Lower Merion School District ("**Lower Merion**"). [*Id.* at ¶ 11].

On June 10, 2014, then-Governor Corbett signed Act 51 of 2014, "An Act amending the act of March 10, 1949 (P.L. 30, No.14), known as the Public School Code of 1949, providing for basic education funding commission" (**"Act 51"**).

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requirement has not actually prevented any students from graduating. Rather, as the Appellants concede, the use of Keystone Exams as a graduation requirement is not scheduled to begin until 2017, and suspension of the law is currently being considered by the legislature. [Appellants' Brief at 15, 36-37 & n. 16].

Under Act 51, a bipartisan Basic Education Funding Commission (**"Funding Commission"**) was formed to develop and recommend a basic education funding formula and to identify factors that may be used to determine the distribution of basic education funding among Pennsylvania school districts. On June 18, 2015, the Funding Commission released a recommendation and report regarding a new formula for distributing state funding for basic education. *See* http://basiceducationfundingcommission.pasenategop.com/files/2014/08/final-report-061915-.pdf.

Appellants ask this Court to declare the existing school financing system unconstitutional. Appellants claim that an objective framework for such an inquiry already exists, asserting that "[t]he state academic standards and student performance measures developed by Respondents beginning in 1999, as well as the costing-out study they commissioned, provide judicially manageable standards by which the Court can assess whether the General Assembly has maintained and supported 'a thorough and efficient system of public education to serve the needs of the Commonwealth,' as required by the Pennsylvania Constitution." [*Id.* at ¶ 12]. Appellants also seek an injunction compelling Respondents to design, enact, and implement a new system for financing public schools. [*Id.* at ¶ 13].

Although Appellants appear to concede that this Court cannot direct Legislative Respondents to adopt any particular funding mechanism, they contend

that "[a]mong other things, the Commonwealth could raise funds for education through other forms of taxation and distribute those funds to local school districts to spend as they see fit." [*Id.* at ¶ 299].

Both Legislative Respondents and Executive Branch Respondents filed Preliminary Objections to the Petition (**"Preliminary Objections"**). On April 21, 2015, the *en banc* Commonwealth Court issued a 6-0 decision sustaining the Preliminary Objections, holding that *Marrero* and *Danson* "preclude our review of Appellants' claims in this matter as nonjusticiable political questions and require the grant of Respondents' first preliminary objections." *William Penn School Dist. v. Pennsylvania Dept. of Educ.*, 114 A.3d 456, 464 (Pa. Commw. 2015) This appeal followed.[4]

[4] Appellants filed their Brief in this Court on September 18, 2015 (**"Appellants' Brief"**). Three sets of amici curiae (collectively, **"Amici"**) filed briefs in support of the Appellants' position: (1) The Consortium of Public Education, et al. (**"Consortium Amici**); (2) the Philadelphia Federation of Teachers, et al. (**"PFT Amici"**); and (3) the Public Citizens for Children and Youth, et al.

SUMMARY OF ARGUMENT

The claims asserted by Appellants arise out of their policy disagreement with the manner in which Pennsylvania's General Assembly has chosen to provide for a thorough and efficient system of public education. At the heart of this case is Appellants' contention that Pennsylvania's system for funding public schools is unconstitutional because, according to Appellants, it is inadequate to meet the educational needs of students in poorer school districts. However, this Court has already rejected nearly identical challenges on two separate occasions, expressly holding in *Marrero* that the method chosen by the General Assembly to finance public schools presents a nonjusticiable political question. The *en banc* Commonwealth Court correctly held that *Marrero* and *Danson* are controlling and preclude the relief Appellants are seeking here.

No amount of creative draftsmanship or storytelling will allow Appellants to escape the result compelled by this Court's prior precedent. The argument that this Court should weigh into this policy debate in its role as the ultimate interpreter of the Pennsylvania Constitution is unavailing, because the Court already performed that exact task in *Marrero*. Specifically, this Court found the Education Clause does not confer "an individual right upon each student to a particular level or quality of education." 739 A.2d at 112. Instead, the Constitution requires the legislature to establish a thorough and efficient ***system*** of public education. *Id.*

The General Assembly fulfills that constitutional duty 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. *Id.* at 113.

This Court has already held in *Marrero* and *Danson* that the current system for funding public education – which is based on a combination of state appropriations, local property taxes, and federal funding – passes constitutional muster. The Commonwealth Court correctly found that the adoption of statewide academic standards and assessments, and other developments since *Marrero*, does not permit a different result in this case. Appellants' argument ignores, among other things, that it is the "very essence" of Pennsylvania's Constitution that courts may not bind future legislatures and school boards to a present view of a required program of educational services. *Danson*, 399 A.2d at 426; *Marrero*, 739 A.2d at 112. Moreover, Appellants and Amici remain unable to articulate *what* "judicially manageable" test they would have this Court apply to determine whether any given funding system is constitutional.

The outcome of this case is not changed because Appellants have included an equal protection claim in addition to their arguments under the Education Clause. Similar claims were asserted and rejected in *Danson*. In short, Appellants seek a judicial remedy for a multi-faceted problem that courts, by their very nature,

are not equipped to address. Trial of this case would impermissibly substitute adversary proceedings for the work of the political branches of government, with no judicially manageable standards for doing so. The appropriate system for funding public education and the proper level of such funding are fair subjects for vigorous public debate. However, as this Court has recognized for over a century-and-a-half, if Appellants believe that the current system is unjust ***"the remedy lies, not in an appeal to the judiciary, but to the people, who must apply the corrective themselves…."*** *Commonwealth v. Hartman*, 17 Pa. 118, 119 (1851).

ARGUMENT

I. APPELLANTS' CLAIMS PRESENT NONJUSTICIABLE POLITICAL QUESTIONS.

The Commonwealth Court sustained Legislative Respondents' preliminary objections on the basis that *Marrero* and *Danson* "preclude our review of Appellants' claims in this matter as nonjusticiable political questions[.]" *William Penn School Dist.*, 114 A.3d at 464. There can be no doubt that the Commonwealth Court correctly interpreted this Court's controlling decisions in *Marrero* and *Danson*. Put simply, the *Marrero* and *Danson* cases are on all fours with this matter and cannot be distinguished.

A. THE COMMONWEALTH COURT CORRECTLY INTERPRETED *MARRERO* AND *DANSON* TO HOLD THAT APPELLANTS' CLAIMS ARE NONJUSTICIABLE.

The core claim made by Appellants in this case is that Legislative Respondents have established "an irrational and inequitable school financing arrangement that drastically underfunds school districts across the Commonwealth and discriminates against children on the basis of the taxable property and household incomes in their district." [Petition at ¶ 1]. Unfortunately for Appellants, this claim is the same one that this Court has held nonjusticiable on two previous occasions, in *Marrero* and *Danson*. Specifically, this Court has found that responsibility for developing a system for financing public education is constitutionally delegated to the General Assembly. Challenges to the legislature's

policy decision with respect to ***how*** it chooses to fund the public schools are not justiciable.

In *Marrero*, the Philadelphia School District and other petitioners alleged that "under the present statutory funding system, the Commonwealth of Pennsylvania does not provide the School District with adequate funding to support the educational programs necessary to meet the unique educational needs of its students."[5] This Court affirmed the Commonwealth Court's dismissal of the Petition on the basis that it presented a non-justiciable political question. Quoting from its previous decision in *Sweeney v. Tucker*, 375 A.2d 698, 706 (Pa. 1977), this Court noted that "[a] challenge to the Legislature's exercise of a power which the Constitution commits exclusively to the Legislature presents a nonjusticiable political question." *Marrero*, 739 A.2d at 112 (*quoting Sweeney*, 375 A.2d at 706).

The *Marrero* Court held that the Pennsylvania Constitution commits to the legislature the responsibility for providing for the maintenance of a "thorough and efficient system" of public schools. *Marrero*, 739 A.2d at 112. The Education Clause "does not confer an individual right upon each student to a particular level or quality of education, but, instead imposes a constitutional duty upon the *legislature* to provide for the maintenance of a thorough and efficient *system* of

[5] *Marrero by Tabalas v. Commonwealth*, 709 A.2d 956, 958 (Pa. Commw. 1998).

public schools throughout the Commonwealth." *Id.* (emphasis in original; citations omitted).

Marrero further holds that the General Assembly fulfills its constitutional duty 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. 739 A.2d at 113. The General Assembly "has satisfied [the constitutional mandate to provide 'a thorough and efficient *system* of public education] by enacting a number of statutes relating to the operation and funding of the public school system in both the Commonwealth and, in particular, in the City of Philadelphia.'" *Id.* at 113 (brackets and italics in original). This basic fact has not changed since *Marrero* was decided.[6] [*See generally* Petition, ¶¶ 263-265].

The *Marrero* decision did not break new ground, but rather built upon decades of precedent, including this Court's 1979 decision in *Danson*. Like *Marrero* and this case, *Danson* also involved a constitutional challenge to the

[6] Appellants attempt to rewrite the relevant constitutional question defined by this Court, arguing that "the Court need only decide whether the current funding scheme bears a 'reasonable relation' to providing students with an opportunity to meet state standards." [Appellants' Brief at 19]. However, the dispositive issue is whether the funding system has a reasonable relation to "providing for the maintenance and support of a thorough and efficient system of public schools," ***not*** whether it bears a reasonable relation to providing students with an opportunity to "meet state standards." In *Marrero*, this Court already answered the pertinent question in the affirmative.

manner in which the legislature has chosen to fund public schools in this Commonwealth. In *Danson*, a group of petitioners alleged that because the Philadelphia School District's revenues were insufficient to provide an "adequate" education, the statutory system by which public schools are funded violated both the Education Clause and the Equal Protection Clause of the Pennsylvania Constitution. 399 A.2d at 362. This Court held that petitioners "have failed to state a justiciable cause of action." *Id.* at 363.

The crux of this Court's holding in *Danson*, as in *Marrero*, is that that courts "may not abrogate or intrude upon the lawfully enacted scheme by which public education is funded, not only in Philadelphia, but throughout the Commonwealth."[7] *Id.* at 367. As then-Chief Justice Flaherty summarized in *Marrero*:

[7] In addition to the *Danson* and *Marrero* cases, this Court affirmed the dismissal of a third constitutional challenge to Pennsylvania's public education funding system in *Pennsylvania Ass'n of Rural and Small Schools v. Ridge*, No. 11 M.D. 1991 (Pa. Commw. Ct. July 9, 1998) (***"PARSS"***), *aff'd*, 737 A.2d 246 (Pa. 1999). In *PARSS*, a group of rural and small school districts argued that the Education Clause "is being violated because there exists a disparity between the amount spent on education among Pennsylvania's 501 school districts, resulting in a corresponding disparity in the education students are receiving." Slip Op. at 3. Appellants contended that the disparity "is a result of an unconstitutional educational funding scheme adopted by the General Assembly allowing wealthy, *i.e.* property-rich school districts, to have more funds available to educate their students." *Id.* Appellants also argued that the system violated the Equal Protection Clause rights of students residing in poorer school districts. *Id.* at 4. Thus, *PARSS* was essentially the same case as this one, brought two decades earlier. Indeed, the lead petitioner in *PARSS* is also an Appellant in this case.

> [T]his 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.***

Id. at 113-14 (emphasis added) (quoting lower court's decision).

This Court has consistently held that the manner in which public education is funded in Pennsylvania is a matter of legislative prerogative. As this Court stated in *School Dist. of Philadelphia v. Twer*, 447 A.2d 222 (Pa. 1982) "[w]e are acutely aware that '[t]he constitution has placed the education system in the hands of the legislature, free from any interference from the judiciary save as required by constitutional limitations.'" *Id.* at 225. *See also School Dist. of Newport Tp. in Luzerne County v. State Tax Equalization Bd.*, 79 A.2d 641, 643 (Pa. 1951) ("appropriation and distribution of the school subsidy is a peculiar prerogative of the legislature"); *Hartman*, 17 Pa. at 119 ("there is no syllable in the constitution which forbids the legislature to provide for a system of general education in any way which they, in their own wisdom, may think best.").

The Appellants' contention that they are not asking this Court to interfere with the legislature's authority over education funding policy, but merely to interpret the Constitution, rings hollow. This Court has *already* performed the task of constitutional interpretation, albeit to a different result than the Appellants would have preferred. As described above, this Court specifically found in *Marrero* that the Pennsylvania Constitution imposes a duty upon the *legislature* to provide for the maintenance of a thorough and efficient *system* of public schools throughout the Commonwealth, which duty has been satisfied by the current funding scheme. 739 A.2d at 113. There is no way for Appellants here to escape that holding. The Commonwealth Court's conclusion that the instant case is nonjusticiable in no way diminishes the judiciary's power as the final arbiter of what the Constitution means. Rather, it simply reaffirms what this Court has already held on that topic. Accordingly, the Commonwealth Court correctly sustained Legislative Respondents' preliminary objections.

B. *MARRERO* AND *DANSON* ARE CONTROLLING OVER CASES FROM OTHER JURISDICTIONS OR INVOLVING OTHER SUBJECT MATTERS.

Appellants endeavor to relitigate the holding reached by this Court in *Danson* and *Marrero* by relying heavily on cases from other jurisdictions, or arising outside of the educational funding context, that reach a contrary result. However, such arguments cannot change the fact that *this* Court has already

decided the issues presented by *this* Petition. *Marrero* and *Danson* are controlling and should be followed under the well-settled principle of *stare decisis*.

1. This Court Should Follow Its Previous Decisions in *Marrero* and *Danson*.

Although Appellants do not specifically argue that *Marrero* or *Danson* should be overturned, they implicitly invite the Court to analyze anew the same legal issues already decided in those cases. This Court should decline that invitation. It is well-settled that when this Court "renders a decision on a particular topic, it enjoys the status of precedent. The danger of casually discarding prior decisions is that future courts may regard the new precedent as temporary as well." *Hunt v. Pa. State Police*, 983 A.2d. 627, 637 (Pa. 2009). Thus, the "doctrine of *stare decisis* maintains that for purposes of certainty and stability in the law, 'a conclusion reached in one case should be applied to those which follow, if the facts are substantially the same, even though the parties may be different.'" *Stilp v. Commonwealth,* 905 A.2d 918, 966-67 (Pa. 2006) (*quoting Burke v. Pittsburgh Limestone Corp.,* 100 A.2d 595, 598 (Pa. 1953)).

The doctrine of *stare decisis* "serves invaluable and salutary principles." *Stilp*, 905 A.2d at 967. Although the rule is not an inexorable command to be followed blindly, this Court has repeatedly recognized the importance of reliance on settled jurisprudence when asked to overturn precedent and "such reliance should not be undercut except for good reason." *Id.* at 968. At base, then, the

"doctrine of *stare decisis* 'promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.'" *Pennsylvania State Ass'n of County Comm'rs v. Commonwealth*, 52 A.3d 1213 (Pa. 2012) at 1230 (*quoting Stilp*, 905 A.2d at n.31)(internal quotations omitted).

In *PSACC*, this Court rejected a request to revisit two previous decisions requiring the enactment of a funding scheme for the unified judicial system. The Court noted that the two decisions were rendered over dissents making points similar to those still being made in an attempt to relitigate the result of the previous cases. 52 A.3d at 1230. The Court further noted that those decisions had become firmly rooted, brought various stakeholders to the table, and given rise to specific measures to implement a unified judicial system. *Id.* Additionally, the Court observed that although its membership had largely changed since the previous decisions, "we have no doubt that the Courts as then constituted fully understood the gravity of the decisions rendered." *Id.* at 1231. Thus, it concluded that "[w]e are not inclined … to reconsider the initial, fundamental judgment." *Id.*

Similar considerations apply here. The current system of funding public schools through a combination of state appropriations, local property taxes, and federal funding has been in place for decades and upheld by this Court and lower courts on multiple occasions. While Appellant School Districts do not favor the

current funding system, other school districts throughout the Commonwealth have come to rely upon it in adopting their budgets and fiscal planning. Any change to the system for funding public education must come from the General Assembly, through the political process, and should not be imposed by this Court under the guise of constitutional interpretation.

Indeed, as was the case in *PSACC*, various stakeholders, acting with the *Marrero* and *Danson* decisions as a backdrop, have made significant steps toward modifying the current system for funding public schools. On June 18, 2015, the Funding Commission created under Act 51 released a recommendation and report (**"Recommendation"**) regarding a new formula for distributing state funding for basic education. As this Court recognized in *Marrero* and *Danson*, to the extent that a new funding scheme is desired, this is the proper way to accomplish that goal – through the political process.

In sharp contrast, judicial imposition of a particular funding formula favored by Appellants – or striking down the entire funding system with nothing to take its place – would completely undermine the established principle that the Constitution has placed the education system in the hands of the legislature and the judiciary cannot tie those hands. *Danson*, 399 A.2d at 426; *Marrero*, 739 A.2d at 112. *See also Teachers' Tenure Act Cases*, (*Malone v. Hayden*), 197 A.344 at 352 (Pa. 1938).

The result advocated by Appellants would quite likely throw the entire public education system into chaos, as the current education funding system that has existed for decades would be stricken, with nothing to take its place. While Appellants and Amici may sincerely disagree with the policy decisions made by the legislature, and may believe that the current funding system has led to inequitable results, that factor does not justify this Court in tossing aside long-settled precedent that it is not the role of the Courts to second guess the General Assembly's determination regarding the appropriate system for financing public education.

2. *Marrero* Precludes Reexamining Whether The Political Question Doctrine Bars Education Funding Challenges.

Any argument by Appellants that the Commonwealth Court misapplied the political question doctrine is foreclosed by *Marrero*, which has already ruled on the exact legal issue in question. That this Court may have found other claims arising in different contexts to be justiciable is utterly irrelevant. Moreover, Appellants' suggestion that cases decided since *Marrero* have "refined," or in the words of PFT Amici "significantly limited the breadth of"[8] the political question doctrine is simply incorrect.

[8] *See* PFT Amici Brief at 31.

The applicable test for determining whether a claim presents a nonjusticiable political question has not changed since *Marrero* was decided. This Court continues to apply the analysis set forth in *Baker v. Carr*, 369 U.S. 186 (1962), to determine whether judicial abstention under the political question doctrine is appropriate. *See Robinson Twp. v. Commonwealth*, 83 A. 3d 901, 928 (Pa. 2013). While Appellants rely upon selective language from wholly dissimilar cases like *Robinson Twp.* (evaluating validity of legislation under Pennsylvania Oil and Gas Act), *Council 13, American Fed. of State, County, and Mun. Employees, AFL-CIO v. Rendell*, 986 A.2d 63 (Pa. 2009) (evaluating preemption of Fair Labor Standards Act), and *Hosp. & Healthsys. Ass'n of Pennsylvania v. Commonwealth*, 77 A.3d 587 (Pa. 2013) (evaluating transfer of funds from designated, special fund to general fund), such cases merely illustrate that the Court has applied the political question analysis to the particular facts of the cases before it. In *Marrero*, such analysis resulted in the conclusion that a challenge to the constitutionality of school funding is nonjusticiable.

Contrary to Appellants' assertion that there has been a change in the way this Court applies the political question doctrine, in *Pennsylvania School Bds. Ass'n v. Commonwealth Ass'n of School Adm'rs*, 805 A.2d 476, 490 (Pa. 2002), this Court once again endorsed the *Marrero* approach to nonjusticiability within the context of the Education Clause. There, the Court assessed a challenge

contending that a statute relating to collective bargaining rights of school administrators violated, *inter alia*, Article III, § 14 of the Pennsylvania Constitution. 805 A.2d at 478. While the Court concluded that the political question doctrine did not prevent it from reviewing the statute's validity in the face of a claim that the Legislature failed to comply with mandatory procedures for enacting legislation, it relied upon *Marrero* in finding that the political question doctrine rendered nonjusticiable a claim that the statute violated the constitutional mandate that the Legislature "provide for the maintenance and support of a thorough and efficient system of public education." *Id.* at 490.

As recently as earlier this year, the Commonwealth Court, relying in part on *Marrero*, correctly summarized that "except in extreme cases where the independence of the judicial branch has been threatened," Pennsylvania courts have shown a reluctance, if not an outright refusal, to second guess budgetary decisions made by the legislature. *Pennsylvania Envt'l Defense Found. v. Commonwealth*, 108 A.3d 140, 154 (Pa. Commw. 2015). *See also Mental Health Ass'n in Pennsylvania v. Corbett*, 54 A.3d 100, 105 (Pa. Commw. Ct. 2012) (relying on *Marrero* to sustain preliminary objections to a complaint seeking declaratory and injunctive relief that the Commonwealth failed to provide proper funding for mental health services as nonjusticiable). No authority cited by Appellants or Amici upsets this settled notion. Accordingly, Appellants have

provided no persuasive reason for revisiting the Court's express holding in *Marrero, i.e.,* that a challenge to the legislatively-enacted system for funding public education presents a nonjusticiable political question.

3. Case Law From Other Jurisdictions Supports This Court's Prior Decision In *Marrero*.

Appellants and Amici also rely heavily upon education funding cases decided in other jurisdictions. As with Appellants' political question doctrine analysis, this discussion of decisions by other state courts is misplaced, since this Court has already squarely decided the issue presented. Furthermore, contrary to Appellants' insinuation, this Court's holding in *Marrero* finds substantial company in the decisions of several other state courts, which also have held that challenges to public school funding systems present nonjusticiable political questions. Indeed, the experience of other states that *have* permitted public education funding challenges to be litigated demonstrates the wisdom of this Court's approach in *Marrero*.

Appellants endeavor to isolate the Commonwealth as an outlier in its established precedent on the nonjusticiability of claims such as those before this Court. To do so, Appellants point to what Appellants characterize as "at least 27 other states, as well as many lower court opinions, that have held that constitutional challenges to education funding are justiciable." [Appellants Brief at 41]. In failing to acknowledge cases to the contrary, Appellants tacitly urge the

Court to believe that Pennsylvania stands alone. It does not. Indeed, in recent years, an increasing number of states have aligned with this Court in finding that constitutional challenges to education funding present nonjusticiable political questions. While each state's constitutional provisions, legislative history, and binding precedent may vary, such cases nevertheless demonstrate keen awareness of the perils of supplanting legislative process with judicial activism.

In *Oklahoma Educ. Ass'n. v. State*, 158 P.3d 1058, 1065–66 (Okla. 2007), the Oklahoma Supreme Court faced claims that the state legislature's "inadequate funding has deprived educators of the opportunity to provide a basic, adequate education to Oklahoma's children, denied Oklahoma students that right to a uniform, basic education, and violated the students' due process and equal protection rights." *Id.* at 1062. After finding that the plaintiffs lacked standing, the court also evaluated whether plaintiffs' claims were justiciable. The court concluded that the plaintiffs' claims were nonjusticiable, for they attempted to "circumvent the legislative process by having this Court interfere with and control the Legislature's domain of making fiscal-policy decisions and of setting educational policy by imposing mandates on the Legislature and by continuing to monitor and oversee the Legislature." *Id.* at 1066. As in *Marrero*, wherein this Court reiterated that questions of "adequate" education or funding are committed

to the exclusive purview of the General Assembly, 739 A. 2d at 114, the Oklahoma court declined to insert itself into the Legislature's domain.[9]

Similarly, in *Nebraska Coal. for Educ. Equity & Adequacy v. Heineman*, 731 N.W.2d 164 (2007), the Nebraska Supreme Court confronted claims alleging that the state's education funding system "does not provide sufficient funds for an 'adequate' and 'quality' education" in violation of the "religious freedom" and "free instruction" clauses of the Nebraska constitution. *Id.* at 169. Applying the political question tests set forth in *Baker v. Carr*, the court upheld the dismissal of the action and concluded that "it is beyond our ken to determine what is adequate funding for public schools. This Court is simply not the proper forum for resolving broad and complicated policy discussions or balancing competing political interests." *Id.* at 181.

[9] Notably, *Oklahoma Educ. Ass'n. v. State* belies Appellants' assertion that "equal protection claims are always justiciable under the political-question doctrine." [Appellants' Brief at 19]. *Baker v. Carr* itself instructs that equal protection claims may still be nonjusticiable if they are "so enmeshed" with the political question elements that render other claims nonjusticiable so as to actually present a political question themselves. *Baker*, 369 U.S. at 227. Moreover, going beyond justiciability, and considering education funding cases where equal protection claims were analyzed, only increases the number of state courts that are aligned with Pennsylvania in applying a deferential, rational basis approach to uphold education funding frameworks as constitutional. *See, e.g., McDaniel v. Thomas*, 285 S.E. 2d 156 (Ga. 1981); *Skeen v. State*, 505 N.W. 2d 299 (Minn. 1993); *Ctee for Educ. Equality v. State*, 294 S.W. 3d 477 (Mo. 2009).

Like the Oklahoma court and this Court in *Danson* and *Marrero*, the Nebraska Supreme Court determined "that the relationship between school funding and educational quality requires a policy determination that is clearly for the legislative branch," for it was well aware of the chaotic results that may issue from judicial intervention into matters of legislation. Citing to select, long-lasting, ineffective or inefficient judicial involvement in funding cases in Arkansas, Kansas, Texas, Alabama, and New Jersey, the Nebraska court reinforced its holding that the claims before it were nonjusticiable political questions and properly for the legislature. The court pointedly noted that "***[t]he landscape is littered with courts that have been bogged down in the legal quicksand of continuous litigation and challenges to their states' school funding systems.*** Unlike these courts, we refuse to wade into that Stygian swamp." *Id.* at 183 (emphasis added).

As described by the Nebraska Supreme Court, the experience in other jurisdictions has vindicated this Court's determination not to wade into the swamp of judicial activism and oversight of school funding. For some courts, the waters of separated powers have become unsustainably muddied when nonjusticiable issues are erroneously acted upon. For example, in *Ex Parte James*, 836 So. 2d 813 (Ala. 2002), the Alabama Supreme Court retreated from decisions issued over the course of a decade of oversight of education funding litigation when it

summarily dismissed the claims before it, finally acknowledging the "obvious impracticalities of judicial oversight" and recognizing "that any specific remedy that the judiciary could impose would, in order to be effective, necessarily involve a usurpation of that power entrusted exclusively to the legislature." *Id.* at 819. After many years and significant expenditures of judicial resources, the Alabama Supreme Court joined "other courts acknowledging, as we do today, such matters [of education funding] to be purely legislative in nature." *Id.* at 818. *See also Pawtucket v. Sundlun,* 662 A. 2d 40 (R.I. 1995) (upholding dismissal of challenge to school funding standards as nonjusticiable and noting that "the absence of justiciable standards" presents a "morass . . . that can entrap a court that takes on the duties of a legislature" and applying rational basis test to equal protection claims).

Oklahoma, Nebraska, Alabama, and Rhode Island are but a few of the courts joining Pennsylvania in finding challenges to education funding nonjusticiable and recognizing that, among other things, "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." *Comm. for Educ. Rights v. Edgar,* 672 N.E.2d 1178 (Ill. 1996) (holding that constitutional challenge to Illinois public education funding system was nonjusticiable and applying rational basis to equal protection claims). *See also Bonner v. Daniels*, 907 N.E.2d

516 (Ind. 2009) (upholding trial court's dismissal of claims and holding that state constitution "does not mandate any judicially enforceable standard of quality, and to the extent that an individual student has a right, entitlement or privilege to pursue public education, this derives from the enactments of the General Assembly, not from the Indiana Constitution"); *Woonsocket School Comm. v. Chafee,* 89 A.3d 778 (R.I. 2014) (reaffirming that challenges to the constitutionality of Rhode Island school system present nonjusticiable political questions); *Coal. for Adequacy & Fairness in School Funding, Inc. v. Chiles,* 680 So.2d 400 (Fla.1996) (upholding dismissal of education adequacy claims as nonjusticiable and noting that "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 as stated in Haridopolos v. Citizens for Strong Schools, Inc.*, 81 So. 3d 465, 471-72 (Fla. D.C.A. 2011).

In short, the lessons of Pennsylvania's sister states serve only as further confirmation that this Court got it right in *Danson* and *Marrero*.

C. THE COMMONWEALTH COURT PROPERLY APPLIED *DANSON* AND *MARRERO* TO BAR APPELLANTS' EQUAL PROTECTION CLAIMS

Appellants urge that even if their claims under the Education Clause are precluded by *Marrero*, the Commonwealth Court erred by applying the same nonjusticiability analysis to their equal protection claims. Appellants are wrong. While it appears that no equal protection claim was specifically raised in *Marrero*, such theory was expressly rejected by this Court in *Danson*, as well as by the Commonwealth Court in *PARSS.* Moreover, the reasoning of *Danson* and *Marrero* applies with equal force, no matter what constitutional theory is advanced by Appellants here.

Appellants concede that *Danson* is the leading case regarding the justiciability of an equal protection claim in the school funding context, but argue that *Danson* "reached the merits of an equal protection challenge to Pennsylvania's school funding system without mentioning the political question doctrine." [Appellants' Brief at 20]. Such characterization is puzzling, to say the least, since petitioners' equal protection argument in *Danson* was ***dismissed on preliminary objections***. 399 A.2d at 363. In other words, *Danson* affirmed the same result reached by the Commonwealth Court here.

The fact that the *Danson* Court did not expressly "mention[] the political question doctrine" is immaterial to the larger holding of that case. In *Danson*, the

Philadelphia School District and parents residing in the district brought a "broad and general" suit against state officials, including the State Treasurer and the Secretary of Education, alleging that "the Pennsylvania system of school financing fails to provide Philadelphia's public school children with a thorough and efficient education and denies them equal educational opportunity solely because of their residence in the School District of Philadelphia." 399 A.2d at 363. This Court upheld the Commonwealth Court's decision sustaining preliminary objections to ***both*** claims, finding that petitioners "have failed to state a justiciable cause of action." *Id.* at 363.

The *Danson* Court specifically held that the judiciary "may not abrogate or intrude upon the lawfully enacted scheme by which public education is funded, not only in Philadelphia, but throughout the Commonwealth." *Id.* at 367. This Court further emphasized that "[i]n 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. *Danson*, 399 A.2d at 366. The legislatively-established system for funding the public schools based upon a combination of federal funds, state appropriations and local property tax revenue is "reasonably related to [the] maintenance and support of a system of public education in the Commonwealth of Pennsylvania." *Id.* at 367.

Furthermore, Appellants provide no cogent explanation as to why a justiciability analysis under the Equal Protection Clause would yield a different result than a similar analysis under the Education Clause. Appellants' generic argument that use of the political question doctrine is "disfavored" where claims of individual liberties are at stake deliberately disregards the fundamental point that the Pennsylvania Constitution "does not confer an individual right upon each student to a particular level or quality of education." *Marrero*, 739 A.2d at 112. Moreover, this is not a case, such as *Sweeney*, in which an individual has allegedly been singled out for unfair treatment. *See* 375 A.2d at 709 (involving challenge by individual who was expelled from Pennsylvania House of Representatives). Rather, Appellants' equal protection claim merely offers a different legal theory for challenging the manner in which the public schools are funded – an issue that this Court has already clearly and unambiguously concluded is a nonjusticiable political question. *Marrero*, 739 A.2d at 112

The Commonwealth Court's decision is also consistent with its previous holding in *PARSS*, affirmed by this Court, that "[b]ecause *Marrero* holds that once the General Assembly establishes a 'system' of public education, what is 'thorough and efficient' education ***and whether it violates the Equal Protection provisions*** is

non-justiciable, PARSS' complaint is likewise non-justiciable."[10] *PARSS*, slip op. at 13 (emphasis added). Accordingly, the Commonwealth Court correctly held that *Marrero* and *Danson* bar Appellants' equal protection claims as well as their claims under the Education Clause.

D. *MARRERO* AND *DANSON* CANNOT BE DISTINGUISHED BY CITING TO SUBSEQUENT EDUCATION INITIATIVES OR OTHER FACTUAL DEVELOPMENTS.

The Commonwealth Court also correctly recognized that "the adoption of statewide academic standards and assessments and the costing-out study and subsequent appropriations since the Supreme Court's decision in *Marrero II* do not preclude its application in this case."[11] *William Penn School Dist.*, 114 A.3d at 463. The Commonwealth Court's decision on this point was obviously correct. This Court has already held that the current ***system*** for funding public education passes constitutional muster. Moreover, Appellants' argument seeks to disregard the well-settled rule that neither the current legislature nor the judiciary can bind the hands of future legislatures with respect to matters of education policy.

[10] Notably, this Court affirmed *PARSS* on the same day that *Marrero* was decided. *Pennsylvania Ass'n of Rural and Small Schools v. Ridge*, 737 A.2d 246 (Pa. 1999). Although a *per curiam* affirmance does not have precedential effect, the fact that this Court affirmed *PARSS* on the same day that it decided *Marrero* should be viewed as an indication that the Court understood all constitutional challenges to the system for funding education to be nonjusticiable, irrespective of the specific legal theory advanced.

[11] The Commonwealth Court defined this Court's decision in *Marrero* as "*Marrero II*" to distinguish it from the Commonwealth Court's own decision in that case.

Finally, Appellants continue to be unable to explain ***how*** the current academic standards and performance measures create a judicially manageable standard for adjudicating constitutional challenges.

1. The Public School Funding System In Place Today Is The Same System Approved In *Marrero* and *Danson*

Because *Marrero* and *Danson* are directly on point, Appellants go to Herculean effort to try to plead around the Court's previous holding that there are no "judicially manageable standards" for addressing a challenge to the Commonwealth's system for funding education. Appellants contend that "[t]he state academic standards and student performance measures developed by Respondents beginning in 1999, as well as the costing-out study they commissioned, provide judicially manageable standards by which the Court can assess whether the General Assembly has maintained and supported a 'thorough and efficient system of public education to serve the needs of the Commonwealth'…." [Petition at ¶ 13]. However, Appellants' claims are simply *Danson* and *Marrero* dressed up in different clothing.

Marrero holds that the General Assembly fulfills its duties under the Pennsylvania Constitution where 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. 739 A.2d at 113. Although Appellants contend that this Court "has never adopted a *per se* rule that education

funding challenges are not justiciable," such argument misses the mark. *Marrero* specifically establishes that that current system for funding public education, which is based on a combination of local property tax revenue, state subsidies, and federal funds, ***does*** bear a "reasonable relation" to that goal. *Id.* at 113.

Accordingly, Appellants and their Amici miss the point when they vigorously argue that they now have stronger evidence in support of their claims, including new research that demonstrates a connection between higher levels of education funding and academic achievement. [12] The Court's decision in *Marrero* was not based upon a factual determination that the petitioners had failed to support their claims, but rather a legal conclusion that such claims are not justiciable because the current funding mechanism bears a reasonable relation to the legislature's constitutional duties.

[12] Although not relevant to the legal issues presented on this appeal, the exact correlation between education spending and academic achievement is still a matter of considerable debate, and other studies have reached the opposite conclusion of that advocated by Appellants and Amici. *See*, *e.g.* Andrew J. Coulson, *State Education Trends: Academic Performance and Spending over the Past 40 Years*, Cato Institute Policy Analysis No. 746, March 18, 2014 *available at http://www.cato.org/publications/policy-analysis/state-education-trends* (finding a 0.075 "correlation between the spending and academic performance changes of the past 40 years, for all 50 states" and noting that "the 0.075 figure reported here suggests that there is essentially no link between state education spending (which has exploded) and the performance of students at the end of high school (which has generally stagnated or declined))"; Eric A. Hanushek, *When School Finance 'Reform' May Not Be Good Policy*, Harvard Journal on Legislation, Summer 1991, 28(2) at p. 425 ("There is no systematic relationship between school expenditures and student performance.").

Appellants do not contend that the *system* for funding education has changed since *Marrero* was decided. Because this Court has made clear that the Pennsylvania Constitution does not confer "an individual right upon each student to a particular level or quality of education," and that the General Assembly has fulfilled its duties by establishing a funding system that is rationally related to the goals of the Education Clause, the instant challenge remains nonjusticiable. *Marrero*, 739 A.2d 112.

2. Neither The Legislature Nor the Judiciary Can Bind Future Legislatures To Today's Academic Standards.

The Appellants' argument regarding current standards and benchmarks also overlooks the fundamental point that the judiciary cannot use academic standards enacted by current or past legislatures (and education officials) to bind subsequent legislatures. To the contrary, the Constitution "makes it impossible for a legislature to set up an educational policy which future legislatures cannot change." *Danson*, 399 A.2d at 366. As this Court explained:

> The people have directed that the cause of public education cannot be fettered, but must evolve or retrograde with succeeding generations as the times prescribe. Therefore all matters, whether they be contracts bearing upon education, or legislative determinations of school policy or the scope of educational activity, everything directly related to the maintenance of a "thorough and efficient system of public schools," must at all times be subject to future legislative control. ***One legislature cannot bind the***

> ***hands of a subsequent one; otherwise we will not have a thorough and efficient system of public schools***.

Id. (*quoting Teachers' Tenure Cases*, 197 A.344 at 352) (emphasis added). *See also Marrero*, 739 A.2d at 112.

Just as one legislature cannot bind the hands of a subsequent one, it would be equally impermissible for the judiciary to bind future legislatures and school boards regarding a constitutionally required 'normal program' of educational services. *Danson*, 399 A.2d at 366; *Marrero*, 739 A.2d at 112. Yet, this is precisely what the Appellants are asking the Court to do here. Appellants urge this Court to declare that a public school financing system that the Court ***has already upheld*** has become unconstitutional because some percentage of students are unable to satisfy academic standards that have been adopted subsequent to *Marrero*. The Appellants' argument conflates current education policy as to appropriate academic goals with what is constitutionally required.

If Appellants' argument were accepted, future legislatures and educators would be rendered powerless to modify the current academic standards without risking a constitutional violation. Indeed, it is telling that the "objectively manageable" standards that Appellants rely upon are not limited to those that are *currently* in place. To the contrary, Appellants repeatedly emphasize a "comprehensive statewide costing out study" initiated in 2006, and a funding

formula adopted in response to that study, that the Appellants acknowledge *is no longer being implemented*. [Petition, ¶¶ 122-134; Appellants' Brief at 11-12].

It would be a wholly inconsistent with *Danson* and *Marrero* – and a strange constitutional argument, indeed – to find that the Education Clause requires perpetual implementation of a particular funding formula followed by previous legislatures, which the current legislature has decided not to adopt. In fact, if Appellants were accurate in their argument that they are not trying to bind future legislatures, then any order granting relief to Appellants based on the current academic standards and benchmarks would be illusory, since an alleged constitutional violation could be remediated merely by eliminating the standards altogether. Appellants are asking this Court to disregard its own precedent by binding future legislatures to Appellants' views as to appropriate education policy.

3. The Legislature's Expectations For What "Teachers Should Teach And Students Should Learn" Do Not Provide Judicially Manageable Standards.

Appellants vigorously argue that that the current array of state educational requirements and expectations create "judicially manageable standards" for determining whether the current education funding system violates the Constitution. Tellingly, however, Appellants do not tell the Court what standard they would ask judges to apply. While the issue has been extensively briefed and argued, neither Appellants nor any of their numerous Amici have offered any

concise and coherent explanation as to how the Commonwealth's judiciary could be expected to distill hundreds, if not thousands, of pages of statutes, regulations, policies, and costing-out studies into a test that could be managed by judges as a matter of constitutional law.

Appellants and Amici have no difficulty stating what they are ***not*** asking for. Appellants agree that they do not contend that all Pennsylvania public school students must achieve proficiency on state exams, nor do they argue that the Court must order the legislature to fund education at the levels identified in the much-touted costing-out study. [Appellants' Brief at 37, 39]. Likewise, Consortium Amici concede that they do not argue that the Constitution "requires every school district to be equally well funded" or that "every school district in Pennsylvania must provide the kind of superior education that Lower Merion can afford to offer." [Consortium Amici Brief at 26]. Yet, without these types of bright-line arguments, Appellants find themselves wholly unable to articulate the judicially manageable standard they *are* advocating.

Such was the point made by this Court in both *Danson* and *Marrero*, where it recognized that even if the Court were able to define the specific components of a "thorough and efficient education," the only judicially manageable standard of which the Court could conceive would be "the rigid rule that each pupil must receive the same dollar expenditures." *Danson*, 399 A.2d at 366; *Marrero*, 739

A.2d at 112. The Court refused to impose such a requirement, recognizing that "expenditures are not the exclusive yardstick of educational quality, or even educational quantity." *Danson*, 399 A.2d at 366; *Marrero*, 739 A.2d at 113. Rather, the educational product is dependent upon many factors, including the efficiency and economy with which available resources are utilized. *Danson*, 399 A.2d at 366; *Marrero*, 739 A.2d at 113.

In this case, the Commonwealth Court logically observed that although subsequent developments since *Marrero* "may establish annual legislative or executive benchmarks regarding student and educational spending that may be used in determining funding levels as a matter of policy, they do not confer funding discretion upon this Court nor provide us with judicially manageable standards for determining whether the General Assembly has discharged its duty under the Constitution." *William Penn School Dist.*, 114 A.3d at 463. Such finding is borne out by Appellants' continued inability to define the standard they want the Court to apply.

Indeed, the comprehensive content-based standards that the Appellants espouse in their Brief serve only to further demonstrate that the matter is not appropriate for judicial intervention. By way of example, Appellants' Brief draws a comparison between the purportedly vague Grade 8 math standards that existed pre-*Marrero* and the specific content standards that currently exist, *e.g.*, "[p]rove

the Pythagorean identity and use it to calculate trigonometric ratios." [Appellants' Brief at 7]. Notwithstanding any utility that such standards might have to a teacher assessing a student's mastery of the subject, it is manifestly unclear how a judge could possibly use these standards in reviewing the constitutionality of the education funding system. Should judges analyze standardized test results to determine whether students throughout the Commonwealth adequately understand how to use the Pythagorean identity to calculate trigonometric ratios? If some students continue to struggle with that advanced concept, should the entire system for funding public schools be blown up as unconstitutional? The educational requirements simply do not translate into a judicially manageable test.

Lacking any explanation as to how the current education expectations and benchmarks establish standards that are capable of being applied by judges, Appellants attempt to couch their argument in terms of providing students "an ***opportunity*** to meet state standards." [Appellants' Brief at 37 (emphasis in original)]. However, such a request is equally incapable of judicial management. How does a court define an "opportunity" to meet standards? Indeed, the Petition's own allegations confirm that students in all school districts throughout the Commonwealth have an *opportunity* to learn. Appellants' grievance lies in what they view as unequal results.

By way of example, the Petition alleges the percentage of students in various school districts who did not score proficient or above in certain subjects, *e.g.*., that 43% of the students in Greater Johnstown School District did not score proficient or above in Algebra I and 22% did not score proficient or above in Literature. [Petition, ¶ 156]. Inverting those numbers means that 78% of Literature students and 57% of Algebra students in that District ***did*** achieve proficiency. Once again, this poses the question of how courts can be expected to draw the line between a constitutional and an unconstitutional funding system by looking at test results. Is a funding system constitutionally acceptable if 10% of students in a school district to fail to achieve proficiency? How about 20%? From a statewide perspective, what number of school districts in the Commonwealth can fail to meet educational expectations before the entire system must be declared unconstitutional?

As a final point, while Appellants invoke state performance standards and benchmarks as a hook for their argument, the remedy they actually seek goes far beyond the already impossible task of requiring a funding system that ensures that all districts will achieve the State's goals for standardized test performance. Appellants recite a plethora of alleged disparities in educational programs and resources offered in various school districts, which they contend are tied to the amount of local funds available. [*See generally* Petition at ¶¶ 175-179]. Appellants conclude that that an education that fails to prepare children "to

participate meaningfully in the civic, economic, social, and other activities of our society and to exercise basic civil and other rights of a citizen of the Commonwealth of Pennsylvania is constitutionally inadequate." [Petition at ¶ 92].

It is scarcely possible to imagine a standard that is less susceptible to judicial management. The arguments advanced by Appellants and Amici, if accepted, would place responsibility on the public education system to, in effect, equalize the quality of life of children in the Commonwealth and to provide a counterbalance to the myriad other personal, social and economic conditions – such as parental involvement, home and community environment, willingness to learn, and natural ability – that contribute to the conditions alleged in the Petition. These issues are outside of the appropriate role of the judiciary. As this Court has already held, what constitutes an 'adequate' education or what funds are 'adequate' to support such a program "are exclusively within the purview of the General Assembly's powers, and they are not subject to intervention by the judicial branch of our government." *Marrero,* 739 A.2d at 113-14.

E. APPELLANTS' ARGUMENT IS ONE OF PUBLIC POLICY THAT MUST BE DIRECTED TO ELECTED PUBLIC OFFICIALS.

Therefore, at its core, the instant matter simply expresses a public policy disagreement over how Pennsylvania's legislature has chosen to fund public schools. Appellants believe that the current system is overly reliant on local tax

revenue; that the legislature inequitably allocates funds among the Commonwealth's school districts; and that Pennsylvania spends too little on public education.[13] [*See, e.g.*, Appellants Brief at 5-7]. Similarly, Amici contend that "the legislature has acted irresponsibly or worse" and that "[t]he need for adequate and equitable school funding is now." [Consortium Amici Brief at 4, 26]. No matter how strongly felt, however, these beliefs are plainly public policy arguments that must be resolved through the political process rather than by the judiciary.

Stated plainly, the manner in which the legislature chooses to allocate the Commonwealth's scarce financial resources among its many vital needs and interests is a political question, which must be determined by the people through their elected representatives. Such point was reiterated by the Commonwealth Court in its recent decision in *Pennsylvania Envt'l Def. Found.*, *supra*. In that case, the Petitioners challenged budget-related decisions pertaining to the leasing of State lands for oil and natural gas development, going to great lengths to establish the importance of protecting the Commonwealth's scenic and natural resources. This Court agreed with the unquestioned need to guard Pennsylvania's

[13] Appellants contend that "[t]here are many alternative funding methodologies available," and propose solutions such as raising taxes and distributing the additional revenue to local school districts. [*Id* at ¶ 299].

natural resources, as protected by the Environmental Rights Amendment to the Pennsylvania Constitution, and continued:

> But, it 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.

Pennsylvania Envt'l Def. Found. 108 A.3d at 164.

This Court has consistently held that the manner in which public education is funded in Pennsylvania is a matter of legislative prerogative. *See generally Twer*, 447 A.2d 222; *School Dist. of Newport Tp.*, 79 A.2d at 643. Reversing the order of the Commonwealth Court, and allowing the Petition to proceed, would impermissibly shift the debate over educational funding philosophy from the democratic arenas of the General Assembly and local school boards to judicial forums unsuited for the task. Educational advocates would advance their cause to judges, rather than to politicians or in the voting booth.

Tellingly, the Appellants' own allegations demonstrate that the instant dispute is inherently a political one. In addition to their disagreement with the system that the legislature has chosen to fund public education, Appellants repeatedly criticize other legislative policy decisions. For instance, Appellants

chastise a "divided" legislature for, among other things, deciding in 2011 to "abandon" a previous funding formula adopted in 2008 (Petition, ¶¶ 131, 134, 137, 141); decry the legislative decision to require school districts to pay for the cost of resident students who attend charter schools (*id.* at ¶ 139); and the criticize Act 1's impact on the ability of school districts to raise local tax revenue (*id.* at ¶ 143).

This Court has recognized, however, that the ability of the General Assembly and state education officials to experiment and vary previous approaches with respect to matters affecting education lies at the heart of the Education Clause. *Danson*, 399 A.2d at 426; *Marrero*, 739 A.2d at 112. The issue of public education funding is one of the most strongly contested political issues of our time. The Pennsylvania judiciary should not interject itself into this political debate under the guise of constitutional interpretation. Thus, the Commonwealth Court correctly sustained Legislative Respondents' Preliminary Objections to the Petition.

II. APPELLANTS' EQUAL PROTECTION ARGUMENT ALSO FAILS TO STATE A CLAIM

It is well-settled that "this Court may affirm the order of the court below if the result reached is correct, without regard to the grounds for decision relied upon by that court." *Fitzpatrick v. Natter*, 961 A.2d 1229, 1245 n.17 (Pa. 2008). Accordingly, even if this Court were to disagree with the Commonwealth Court's determination that Appellants' claims under the Equal Protection Clause are

nonjusticiable, the Commonwealth Court's order sustaining Legislative Respondents' Preliminary Objections to Count II of the Complaint can be affirmed on the alternative basis that Appellants' Equal Protection Clause argument fails to state a claim upon which relief can be granted.

A. APPELLANTS FAIL TO STATE A VALID EQUAL PROTECTION CLAIM BECAUSE PENNSYLVANIA'S PUBLIC SCHOOL FUNDING SYSTEM MAKES NO CLASSIFICATIONS.

The starting point in any equal protection analysis "is a determination of *whether the State has created a classification* for the unequal distribution of benefits or imposition of burdens." *Commonwealth v. Parker White Metal Co.*, 515 A.2d 1358 (Pa. 1986) (emphasis added). Put differently, the Equal Protection Clause does not apply to every deprivation of an individual's rights (fundamental or otherwise), but only to deprivations caused by that individual's membership in a particular class. In this case, Appellants' equal protection claim is conceptually inappropriate, because Appellants do not identify any "classification" present in the current public education funding system.[14]

[14] For this reason, Appellants' false analogy to a hypothetical "funding scheme that arbitrarily provided $1,000 to each low-income school district and $10,000,000 to each high-income school district" is empty rhetoric. Such a system would not only draw a specific classification with respect to the distribution of the state's education subsidy, that classification would be facially irrational. The same cannot be said for the *actual* funding system that exists, which Appellants concede provides lower wealth school districts with a *higher* state subsidy to help fill the gap created by disparities in local revenue. [Petition at ¶ 11].

The allegations made here are distinguishable from those at issue in *Danson*, where the petitioners alleged "a statutory classification between the Philadelphia School District and all other state school districts" in which the Philadelphia School District alone was statutorily prohibited from levying taxes. *See Danson*, 399 A.2d at 369 (Manderino, J. dissenting). By contrast, Appellants in this case cite a facially-neutral funding system, which draws no statutory classifications, and argue that the *impact* of the statute is to create a financial and educational disparity between low-wealth and high-wealth school districts. Thus, Appellants have failed to articulate a viable equal protection argument.

B. APPELLANTS' EQUAL PROTECTION ARGUMENT IS PRECLUDED BY *DANSON*.

Even if Appellants had adequately alleged that the public education funding scheme creates a statutory classification that is subject to an equal protection analysis, such claim is precluded by this Court's holding in *Danson*, which holds that Pennsylvania's public school funding system serves the rational basis of preserving local control over education.

It is firmly established that "[a] statute duly enacted by the General Assembly is presumed valid and will not be declared unconstitutional unless it 'clearly, palpably and plainly violates the Constitution.'" *Harrisburg School Dist. v. Zogby*, 828 A.2d 1079, 1087 (Pa. 2003). A statute "implicating neither suspect classes nor fundamental rights-will be sustained if it meets a 'rational basis' test."

Pennsylvania Liquor Control Bd. v. Spa Athletic Club, 485 A.2d 732, 734 (Pa. 1984) (citation omitted). The rational basis standard is satisfied if the law "bear[s] a reasonable relationship to a legitimate state purpose." *Harrisburg School Dist* 1088.

In *Danson*, the Supreme Court applied a rational basis analysis to an equal protection claim that Pennsylvania's education funding system discriminates against students in Philadelphia, explaining:

> As long as the legislative scheme for financing public education "has a reasonable relation" to "(providing) for the maintenance and support of a thorough and efficient system of public schools," … the General Assembly has fulfilled its constitutional duty to the public school students of Philadelphia. **The Legislature has enacted a financing scheme reasonably related to [the] maintenance and support of a system of public education in the Commonwealth of Pennsylvania.** The framework is neutral with regard to the School District of Philadelphia and provides it with its fair share of state subsidy funds. This statutory scheme does not "*clearly, palpably*, and *plainly* violate the Constitution.

399 A.2d at 367 (boldface added; italics in original; citations omitted); *see also Marrero*, 739 A.2d at 133.[15]

[15] Numerous high courts in other states similarly have applied a rational basis standard to dismiss equal protection challenges to school funding systems. *See, e.g.*, *Hornbeck v. Somerset County Bd. of Educ.*, 458 A.2d 758 (Md. 1983); *McDaniel*, 285 S.E.2d at 167; *Skeen*, 505 N.W.2d 299; *City of Pawtucket*, 662 A.2d at 62; *School Admin. Dist. No. 1 v. Comm'r, Dep't of Educ.*, 659 A.2d 854, 858 (Me. 1995); *Ctee for Educ. Equality*, 294 S.W. 3d 477; *Lobato v. State*, 304 P.3d 1132 (Colo. 2013); *Edgar*, 672 N.E.2d 1178.

Appellants appear to concede that *Danson* is controlling, but deliberately misinterpret the holding of that case. [*See* Appellants' Brief at 20]. Appellants emphasize *dicta* contained in footnote 10 of the *Danson* opinion, in which the Court noted that the Philadelphia School District had not alleged disparities in total and per child expenditures throughout the state. 399 A.2d at 365, n.10. However, there is nothing in the language of *Danson*, or any subsequent case decided by this Court, to indicate that the result would have been any different had allegations of funding disparity among school districts been made. Indeed, in *PARSS*, the Commonwealth Court applied *Danson* to reject an equal protection claim that was explicitly premised upon the disparity in education funding between districts. *PARSS*, Slip Op. at 29, 127.

The Commonwealth Court's holding in *PARSS* was logically reasoned and correctly interpreted *Danson*, in which this Court clearly and unambiguously found that the current education funding system does ***not*** violate the Equal Protection Clause because it is rationally related to a legitimate state interest. *Danson*, 399 A.2d at 367. Specifically, this Court held that the Constitution's framers "endorsed the concept of local control to meet diverse local needs ***and took notice of the right of local communities to utilize local tax revenues to expand educational programs subsidized by the state***." *Id.* (emphasis added). As was true when *Danson* was decided, Pennsylvania's current system for funding public education

is based on a combination of state appropriations and local property taxes, with some additional funding coming from the federal government. [Petition, ¶¶ 263-265]. The fact that some communities may elect to spend at higher levels to support their local school systems is simply not a constitutional violation.

The Illinois Supreme Court expanded upon this reasoning in *Edgar*, where it found that State's education funding system to be "rationally related to the legitimate state goal of promoting local control," reasoning:

> [t]he general structure of the state's system of funding public schools through state and local resources—and the particular amounts allocated for distribution as general state aid—represent legislative efforts to strike a balance between the competing considerations of educational equality and local control. Certainly reasonable people might differ as to which consideration should be dominant. However, the highly deferential rational basis test does not permit us to substitute our judgment in this regard for that of the General Assembly, and we have no basis to conclude that the manner in which the General Assembly has struck the balance between equality and local control is so irrational as to offend the guarantee of equal protection. We also note that although reliance on local wealth to fund public education produces variations in resources which do not necessarily correspond to differences in educational needs, the same may be said for a variety of important governmental services, such as police and fire protection, which have traditionally been funded at the local level. Consequently, the logical implications of declaring Illinois' system of financing public education to be 'irrational' might be far reaching indeed. While the present school funding scheme might be thought unwise, undesirable or unenlightened from the standpoint of contemporary notions of social justice,

> these objections must be presented to the General Assembly.

672 N.E.2d at 1196 (internal citations omitted). *See also* PARSS, Slip Op. at 122-23, n. 73 ("The outcome of equal protection challenges to disparities in funding of education between districts could have a great impact on the way all goods and services are provided at the local level").

Importantly, Appellants concede that the current funding formula provides poorer school districts with a *higher* per-student Commonwealth subsidy than more affluent districts. [Petition, ¶ 267 ("[t]he higher the percentage the poorer the district and the more money it will receive from the Commonwealth")]. Appellants contend that this is not enough, because the higher state subsidies do not completely close the gaps that exist between school districts, which result from disparities among local districts in their ability to raise property tax revenue. [*See id.* at ¶ 11]. Yet, this argument is foreclosed by *Danson*, which specifically recognizes the right of local communities to utilize local tax revenues to expand educational programs in their districts.[16] 399 A.2d at 367.

[16] Appellants' contention that the funding system violates the Equal Protection Clause because the Commonwealth has substantially limited the ability of school districts to raise revenue from local sources, *e.g.*, by enacting Act 1 (Petition, ¶ 296), merely rehashes the argument already rejected in *Danson*. There, petitioners complained that state law imposed "strict ceilings" on the ability of local communities to raise taxes. 399 A.2d at 364. This Court nevertheless found local control to be a rational basis for a funding system in which local tax revenues "are the major source of school financing in Pennsylvania." *Id.* at 364.

Appellants' argument that the current funding system is irrational because local control over education funding in Pennsylvania is "illusory" and "a myth" (Petition at ¶¶ 296, 298), is simply litigation rhetoric that is not only inconsistent with the holding in *Danson*, but is refuted by Appellants' own factual averments, which irrefutably demonstrate the continued importance of local control. The Petition discusses the wide range of choices different School District Appellants have made to address their current budget constraints. [Petition at ¶¶ 181-224]. While the School District Appellants undoubtedly wish that they did not have to make these tough choices, their own allegations confirm, rather than disprove, the primary role of local educators in choosing how to best utilize available education funds. The diverse budget-cutting strategies adopted, as outlined in the Petition, were made at the local level, not imposed by the Commonwealth. Therefore, they reflect the very essence of "local control."[17]

[17] The various budget-reduction strategies discussed in the Petition provides yet another vital illustration as to why there can be no "judicially manageable standard" for adjudicating Appellants' challenge. Legislative Respondents in no way take lightly the serious funding constraints impacting some of the Commonwealth's school districts, nor the unfortunate consequences that these program cuts can have on students. Nevertheless, it cannot be reasonably argued that budget-driven decisions such as eliminating golf teams, woodworking classes, ninth grade athletic teams or drama productions violate the Pennsylvania Constitution. Again, this draws into sharp focus the fact that there are no judicially manageable standards for analyzing these types of decisions as a matter of constitutional interpretation. Plainly, such matters must be left to the discretion of legislators and educators, not imposed by judges.

Finally, this Court's use of a rational basis test for evaluating equal protection challenges to the legislatively enacted system for funding public education is consistent with United States Supreme Court jurisprudence. As the Supreme Court has explained:

> No scheme of taxation, whether the tax is imposed on property, income, or purchases of goods and services, has yet been devised which is free of all discriminatory impact. In such a complex arena in which no perfect alternatives exist, the Court does well not to impose too rigorous a standard of scrutiny lest all local fiscal schemes become subjects of criticism under the Equal Protection Clause.

San Antonio Indep. School Dist. v. Rodriguez, 411 U.S. 1 (1973).

In short, because this Court has already determined that the current funding scheme is rationally related to the legitimate state interest of preserving local control over public schools, Appellants' argument under the Equal Protection Clause fails to state a claim as a matter of law.

C. EDUCATION IS NOT CONSIDERED A "FUNDAMENTAL RIGHT" FOR PURPOSES OF EQUAL PROTECTION ANALYSIS.

Appellants also try to avoid application of the rational basis test by arguing that education is a fundamental right in Pennsylvania. However, this argument, too, is precluded by this Court's decision in *Danson*. *See generally PARSS*, Slip Op. at 122, n. 72 ("applying a rational basis test rather than the strict scrutiny

standard suggested that the Court believed education was not a fundamental right in Pennsylvania").

The United States Supreme Court has recognized that "[i]t is not the province of this Court to create substantive constitutional rights in the name of guaranteeing equal protection of the laws." *Rodriguez*, 411 U.S. at 34. With respect to education, this Court has already determined that the Pennsylvania Constitution "does not confer an individual right upon each student to a particular level or quality of education, but, instead imposes a constitutional duty upon the *legislature* to provide for the maintenance of a thorough and efficient *system* of public schools throughout the Commonwealth." *Marrero*, 739 A.2d at 112 (emphasis in original). *Cf. Rodriguez*, 411 U.S. at 34-35 (holding that the right to education is not a fundamental right under the United States Constitution's Equal Protection Clause).

Appellants misinterpret this Court's decision in *Wilkinsburg Educ. Ass'n v. School Dist. of Wilkinsburg*, 667 A.2d 5 (Pa. 1995) as holding to the contrary. However, as the Commonwealth Court explained in *PARSS*, this Court's *dicta* in *Wilkinsburg* that education is a fundamental right cannot fairly be read to reverse prior case law that education was not a fundamental right or to hold that a strict scrutiny standard should apply when reviewing the General Assembly's actions in

funding education.[18] *PARSS*, Slip. Op. at 125-26. As the U.S. Supreme Court explained in *Rodriguez*, the "undisputed importance of education" does not raise it to the level of a fundamental constitutional right, or justify the court in departing from "the usual standard for reviewing a State's social and economic legislation." 411 U.S. at 33.

Several lower court decisions applying Pennsylvania law, both before and after *Wilkinsburg*, have expressly rejected the argument that education is a fundamental right subject to a strict scrutiny analysis. *See Bensalem Twp. School Dist. v. Commonwealth*, 524 A.2d 1027, 1029 (Pa. Commw. Ct. 1987) ("Under the Pennsylvania Constitution, the General Assembly is charged with providing 'for the maintenance and support of a thorough and efficient system of public education.' ***Pennsylvania courts, however, have refused to recognize in this mandate a fundamental right to education subject to strict judicial scrutiny***"); *Lisa H. v. State Bd. of Educ.*, 447 A.2d 669 (Pa. Commw. Ct. 1982), *aff'd*, 467 A.2d 1127 (Pa. 1983) ("the right to a public education in Pennsylvania is not a fundamental right, but rather a statutory one and that as such, it is limited by statutory provisions); *D.C. v. School Dist. of Philadelphia*, 879 A.2d 408 (Pa. Commw. Ct. 2005) (noting that the right to education is not a fundamental one, and

[18] *Wilkinsburg* did not involve an equal protection claim. Rather, the Court held that a lower court had erred in issuing a preliminary injunction, which prevented a school district from entering into a contract for the operation and management of a school, without holding an evidentiary hearing.

applying the rational basis test to a claim that a statute governing the disposition of public school students in Philadelphia returning from juvenile delinquency placement was unconstitutional). *See also Brian B. ex. rel Lois B. v. Pennsylvania Dep't of Educ.*, 230 F.3d 582 (3d Cir. 2000) (applying rational basis analysis to argument that Pennsylvania statute limiting the education available to youths convicted as adults and sentenced to adult, county facilities violated federal Equal Protection Clause). This Court should resist any plea by Appellants for this Court to ignore decades of precedent applying a rational basis test to equal protection claims based upon a denial of education.

As a final but critically important point, even if education could be construed as a fundamental right under some circumstances, ***Appellants do not allege that they are being denied the right to an education.*** Indeed, all of the Individual Appellants are students currently enrolled in Pennsylvania public schools or parents of such students. [Petition, ¶¶ 23-24, 32-34, 40-42, 48-50, 57-58, 67]. Appellants' claims relate instead to the ***quality*** of education being received. Yet, as emphasized throughout this Brief, this Court has already determined that the Pennsylvania Constitution does not confer "an individual right upon each student to a particular level or quality of education." *Marrero*, 739 A.2d at 112.

Accordingly, while there is no question that quality public education is a matter of the highest importance, arguments relating to quality of education or

differences in per-pupil spending cannot be subjected to a strict scrutiny analysis. As summarized by the U.S. Supreme Court in *Rodriguez*: "Whatever merit appellees' argument might have if a State's financing system occasioned an absolute denial of educational opportunities to any of its children, that argument provides no basis for finding an interference with fundamental rights where only relevant differences in spending levels are involved…." 411 U.S. at 37.

CONCLUSION

The Court's decisions in *Danson* and *Marrero* are controlling and establish that Appellants have failed to state a claim. The General Assembly, acting as the voice of the people, has complied with its constitutional mandate by enacting statutes relating to the operation and funding of public schools that are rationally related to the goal of providing a thorough and efficient system of public education. The Commonwealth Court correctly held that Appellants' claims are nonjusticiable political questions. Accordingly, the Commonwealth Court's Order sustaining Legislative Respondents' Preliminary Objections should be affirmed.

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief complies with the 14,000 word limit established by Pa. R.A.P. 2135.

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