IN THE COMMONWEALTH COURT OF PENNSYLVANIA

WILLIAM PENN SCHOOL DISTRICT, *et al*., Petitioners, v. PENNSYLVANIA DEPARTMENT OF EDUCATION, *et al*., Respondents.	No. 587 MD 2014

PETITIONERS' BRIEF IN OPPOSITION TO LEGISLATIVE RESPONDENTS' MOTION FOR POST-TRIAL RELIEF

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I. INTRODUCTION

This Court successfully accomplished the formidable task entrusted to it by the Pennsylvania Supreme Court: to provide low-wealth school districts, statewide organizations, and families the "opportunity to develop the historic record concerning what, precisely, thoroughness and efficiency were intended to entail" and "a record enabling assessment of the adequacy of the current funding scheme relative to any particular account of the Constitution's meaning." *William Penn Sch. Dist. v. Pennsylvania Dep't of Educ.* ("*William Penn II*"), 170 A.3d 414, 457 (Pa. 2017). The Court listened to dozens of witnesses, admitted nearly 1,800 exhibits, and presided over 49 days of trial, recorded in more than 15,000 pages of transcript. After a careful and thorough deliberation of a fulsome record in a detailed 778-page opinion, the Court's assessment was clear, and the conclusion inescapable: the current school funding system fails to live up to the constitutional mandate.

Legislative Respondents respond to the Court's meticulous and rigorous efforts with a series of extraordinary and unsupportable claims. They posit that the Court "glosse[s] over" or does not "materially address" arguments, and that its commitment to weighing the evidence "amounted to highlighting any facts that it believed would support its conclusion, while ignoring a multitude of facts that do not." Senator Ward's Brief in Support of Post-Trial Relief ("Ward Br.") 26-28.

And they argue the Court did little more than "elevate[] one side of a disputed public policy argument to the position of a constitutional requirement." Leader Cutler's Brief in Support of Post-Trial Relief ("Cutler Br.") 50.

Bold assertions demand serious support, but Legislative Respondents offer none. They recycle legal arguments that both the Supreme Court and this Court have already considered and soundly rejected. And rather than grapple with the record, they disregard it, and make demonstrably false claims about the Court's methodical analysis of evidence instead.

Stripped of bluster, Legislative Respondents offer nothing to alter what this Court has properly concluded: the Pennsylvania Constitution is being violated, at great expense to this Commonwealth and its children. Legislative Respondents' arguments provide no basis for modifying the Court's judgment and their Motion for Post-Trial Relief should be denied.

II. STANDARD OF REVIEW

The standard for post-trial relief is high. It "should be granted only where there is clear error" which results in "prejudice by that error." *Lahr v. City of York*, 972 A.2d 41, 47 (Pa. Commw. Ct. 2009). Moreover, it is axiomatic that "fact-finder[s] are free to believe all, part or none of the evidence presented." *Commonwealth v. Hoffman*, 938 A.2d 1157, 1160 n.10 (Pa. Commw. Ct. 2007). Post-trial relief should therefore not be granted because of "a mere conflict of

testimony," or even if one factfinder, "hearing the same facts, would have arrived at a different conclusion" than another. *Lahr*, 972 A.2d at 52. For those reasons, a court's decision on post-trial relief "will not be reversed without a manifest error of discretion or a clear error of law." *Borough of Jefferson v. Bracco*, 635 A.2d 754, 756 (Pa. Commw. Ct. 1993).

III. SUMMARY OF ARGUMENT

After extensive litigation, this Court concluded that the Education Clause "requires that every student be provided with a meaningful opportunity to succeed academically, socially, and civically, which requires that all students have access to a comprehensive, effective, and contemporary system of public education," and that the right to public education is fundamental. *See* Feb. 7, 2023 Memorandum Opinion ("Op.") 646, 775.

Armed with an exhaustive record of the current system's failures, the Court found that Respondents' funding scheme falls starkly short of this constitutional minimum, with school districts "lacking the very resources state officials have identified as essential to student achievement" and "being forced to choose which few students would benefit from the limited resources they could afford to provide, despite knowing more students needed those same resources." Op. 774.

The Court also examined how the education system was actually performing for students—a necessary step to "determine if the system is thorough and efficient

and to give effect to the phrase to serve the needs of the Commonwealth." Op. 774 (internal quotation marks omitted). And what the Court found was that the "lack of resources shows in the evidence of outcomes": evidence demonstrating chronic failure and wide achievement gaps across a score of measures between those fortunate enough to live in a district with resources and those who are not. Op. 774. Finally, the Court found there was no compelling—or even rational—justification for these disparities. Op. 770-73. Accordingly, the Court held that Respondents were clearly, plainly, and palpably in violation of both the Education Clause and the Equal Protection provisions of the Pennsylvania Constitution, and "allow[ed] Respondents . . . the first opportunity, in conjunction with Petitioners, to devise a plan to address the constitutional deficiencies identified herein." Op. 775-76.

Faced with a decision "reached after careful thought and thorough deliberation of the law and the volumes of evidence presented," Op. 777, Legislative Respondents disparage it. They argue that the Court's interpretation of the Education Clause "appeared out of thin air," that its standard is "impossible to apply," that the Court cherry-picked facts to reach its conclusions, and that those conclusions "amount to policy critiques" on "heavily studied and debated policy issues" that are "not suitable for judicial determination." *See* Ward Br. 4, 7-8; Cutler Br. 24, 43, 45.

On the facts, Legislative Respondents take extraordinary liberties, proclaiming that this Court ignored evidence when the Court actually considered it in pages of patient detail. And Legislative Respondents' claims of legal error are premised on a critical "mistake[:] . . . conflat[ing] legislative policy-making pursuant to a constitutional mandate with constitutional interpretation of that mandate and the minimum that it requires." *William Penn II*, 170 A.3d at 463. But Legislative Respondents' repeated insistence that this matter "is simply a dispute over public policy voiced by a disappointed minority requires a blindness to the reality here and to Pennsylvania history, including Pennsylvania constitutional history." *Robinson Twp. v. Commonwealth*, 83 A.3d 901, 976 (Pa. 2013). In reality, "[t]he record does not support the ad hominem attack." *Id.* at 925 n.15.

Moreover, despite the fact that this Court directed Legislative Respondents to file briefs in support of their Joint Motion for Post-Trial Relief, both Senator Ward and Leader Cutler failed to brief a number of the alleged errors identified in their Motion. *See* Ward Br. 2 n.1, Cutler Br. 7 n.2. Legislative Respondents have had their chance; this Court should consider those issues waived. *See Bd. of Supervisors of Willistown Twp. v. Main Line Gardens, Inc.*, 155 A.3d 39, 45 (Pa. 2017) ("a trial court has the inherent authority to order the filing of briefs, and if a party fails to comply with an order to do so, the result may be waiver of the unbriefed issues") (citation and emphasis omitted); *accord Griffin v. Berdaoui*, 260

A.3d 131 (Pa. Super. Ct. 2021) (finding an issue was waived on appeal when it was raised in a post-trial motion but not developed in the supporting brief); *Lewis v. Phillips Grp. of Md., LLC*, 248 A.3d 503 (Pa. Super. Ct. 2021) (same).[1]

This Court's decision was well-reasoned and grounded in law and fact. The Commonwealth is violating the Constitution. Legislative Respondents' re-hashing of the arguments they have made before, mixed with spurious attacks on this Court, are simply another effort to avoid their obligation to remedy the deprivations students in low-wealth school districts face daily. Their request for post-trial relief should be rejected.

IV. ARGUMENT

A. THE COURT'S INTERPRETATION OF THE EDUCATION CLAUSE WAS SOUND

1. The Court's interpretation of the Education Clause was grounded in its plain language and history.

In its Opinion, this Court employed bedrock principles of constitutional construction to fulfill its mandate to "give meaning and force" to the Education Clause. *William Penn II*, 170 A.3d. at 457. The Court started with an analysis of the Clause's language, correctly determining that the terms "thorough and

[1] Should the Court decide to rule on the merits of the unbriefed issues, however, Petitioners incorporate by reference the arguments set forth in their previously submitted Proposed Findings of Fact and Conclusions of Law and Post-Trial Briefs. *See Main Line Gardens*, 155 A.3d at 44 (if a court rules on the merits of post-trial motion issues that were not developed in a supporting brief, it should do so "in reliance upon the prior briefs and arguments of the parties addressing the issues presented in the post-trial motions.").

efficient" must be interpreted consistent with their usage at the time they first appeared in the Constitution in 1874, and relying on contemporaneous dictionary definitions to conclude that a "thorough and efficient" system of education is one that is "complete" and "effective or competent to produce the intended effect." Op. 627-34. The Court then considered the history of the Clause, including its revisions in 1967, to conclude that the purpose of the Education Clause has not changed since it was adopted in the 1874 Constitution, and that the addition of the phrase "to serve the needs of the Commonwealth" reflected "the importance of educating all youth to ensure the future of the Commonwealth[,] . . . a steadfast belief that survived centuries" before it was "explicitly memorialized in the 1967 Constitution." Op. 634-35. The Court's analysis followed the well-worn path that other state courts have taken in interpreting their own education clauses. *Id*. 636-46.

To justify their request for post-trial relief, Legislative Respondents must demonstrate an error in this reasoning. But all their attempts to belittle the Court's careful exposition ring hollow. Their complaints that the Court's standard "appeared out of thin air" and was "proclaim[ed] without substantial analysis," Ward Br. 4-5, or that the standard introduces "words and concepts that are not found" in the language of the Clause and relies "primarily, if not exclusively, on general observations," Cutler Br. 38-39, are belied by the pages and pages of well-

reasoned analysis the Court devoted to its undertaking. Ultimately, all of their claims of "error" boil down to one complaint: the Court rejected Legislative Respondents' preferred interpretations of the Clause.

The Court was correct to do so. In the face of the well-settled principle that constitutional language must be interpreted as understood at the time of its adoption, *and* the fact that the definition of "efficient" as "effective" "remained largely the same" between 1874 and 1967, *see* Op. 629-30 & n.85, Leader Cutler's insistence that "efficient" should be interpreted as "with limited waste" is baseless. Cutler Br. 34. Senator Ward's repeated claim that the right to an education was "taken out of the charter" during a drafting change, Ward Br. 31, has absolutely no basis in the historical record. *See infra* Section IV.C.1. Leader Cutler's proffered interpretation of "to serve the needs of the Commonwealth"—that it "enshrin[ed] the General Assembly's discretion to consider *all* of the Commonwealth's needs in determining how to fulfill its constitutional mandate," Cutler Br. 38 (emphasis in original)—has been explicitly rejected by the Pennsylvania Supreme Court. *See William Penn II,* 170 A.3d at 464 (holding that the General Assembly's obligations under the Education Clause should not "jostle on equal terms with non-constitutional considerations that the people deemed unworthy of embodying in their Constitution."); *see also id.* at 460 (holding that the phrase "does not textually repose in the General Assembly the authority to self-monitor and self-validate its

compliance with that provision."). And Senator Ward's stubborn insistence that only the General Assembly can decide what "serves the needs of the Commonwealth," Ward Br. 4, grows more untenable each time the leadership of the General Assembly claims that privilege, and then fails to articulate what it believes those needs actually are.

The Court was also correct to reject Legislative Respondents' inputs-only, "standard basic" interpretation of the Education Clause. Cutler Br. 32. To the extent a "basic" standard was endorsed in *PARSS v. Ridge*, it was disconnected from that court's analysis of the Clause's text and history, because that court believed that it was constrained by the "ad hoc" approach taken in cases that have since been abrogated. 1998 Pa. Commw. Unpub. LEXIS 1, *134 (July 9, 1998); *see* Petitioners' July 15, 2022 Post-Trial Reply Brief ("Pet'r Reply Br.") 23-25. Moreover, there is no basis in the text or the history for an input-only standard. As this Court noted, the definition of the word "efficient" "requires a determination as to the intended effect of the Education Clause," and the phrase "to serve the needs of the Commonwealth" identifies that intended effect: "producing students who, as adults, can participate in society, academically, socially, and civically." Op. 632-33. Legislative Respondents' standard would render that phrase meaningless.

The Court was correct to set aside Legislative Respondents' meritless arguments and should do so again now.

2. The Court's interpretation of the Education Clause is judicially manageable.

Legislative Respondents also argue that the Court's standard is not judicially manageable, criticizing it as a "statement of ideals" that is "impossible to apply" because its concepts are "inherently subjective" and "eminently personal and relative," Ward Br. 5-7, Cutler Br. 38-41. Respondents' complaints are premised on a willful misunderstanding of the Court's Opinion.

Legislative Respondents begin by dismissing the Court's constitutional interpretation as "[taking] the nebulous terms in the Education Clause and simply replac[ing] them with different nebulous terms, which are no easier to understand or apply." Ward Br. 8. This claim lacks merit. As an initial matter, courts are routinely called on to give meaning to so-called "nebulous" terms, and as both this Court and the Supreme Court have made plain, numerous other state courts have effectively interpreted terms similar to the ones in Pennsylvania's Education Clause. *William Penn II*, 170 A.3d at 455; Op. 636-46.

Moreover, the words this Court used to give the Clause meaning are not free-floating concepts whose definitions need to be divined from Dictionary.com, nor are they hopelessly personal or subjective. *See* Ward Br. 7, Cutler Br. 59. In fact, the Court explicitly *told* Respondents what a "meaningful opportunity" entails: it "requires that all students have access to a comprehensive, effective, and contemporary system of education." Op. 634. And there are hundreds of findings,

including numerous admissions by Respondents themselves, that demonstrate what a comprehensive, effective, and contemporary education looks like, and how to measure it. *See, e.g.,* Op. 35, FOF ¶¶ 136-39; *id.* 37, ¶¶ 145-251; *id.* 69, ¶¶ 266-289; *id.* 81, ¶ 314; *id.* 104, ¶¶ 408-430; *id.* 166, ¶ 681; *id.* 389, ¶ 1727; *id.* 456, ¶¶ 1971-1980; *id.* 487, ¶ 2040; *id.* 488, ¶ 2042; *id.* 534, ¶ 2142-48; *id.* 538, ¶ 2154; *id.* 540, ¶ 2157. The Court even repeatedly referenced the state's own standards of success—not just in school but in the civic and social realms that are central to adult life—based on its findings that the state had a thorough process for arriving at them.[2] *See, e.g.*, Op. 35, FOF ¶¶ 136-39; *id.* 37, ¶¶ 145-251; *id.* 69, ¶¶ 266-283; *id.* 104, ¶¶ 408-430; *accord William Penn II*, 170 A.3d at 453 (citing to the Pennsylvania Administrative Code's provision on the purposes of education and noting that "a court could fashion a constitutionalized account not unlike this one, and measure the state of public education against that rubric, just as other states have done"). Legislative Respondents' claim that they cannot implement the Court's standard is disingenuous.[3]

[2] This is not, however, tantamount to constitutionalizing the state's current standards, Ward Br. 13. To the contrary, the Court's interpretation of the Education Clause reflects the fact that "[i]t is the court's constitutional obligation to review the constitutionality of legislative action," and that a standard that merely parrots whatever state standards are currently in place "would rubber stamp legislative action without regard for whether it passes constitutional muster." Op. 645-46 (citing *William Penn II*, 170 A.3d at 450).

[3] In fact, Legislative Respondents would be faced with the same challenges if the Court had adopted its proposed input-only, "basic standard public school education." Ward Br. 5, 32. The legislature would still have to understand the meaning of the terms "basic" and "standard" and determine how to measure whether inputs met that "basic standard" threshold.

In the face of the Court's clear exposition, Legislative Respondents twist the Court's words into a strawman standard that they complain is unworkable. Leader Cutler accuses the Court of "rewriting the Education Clause to require that the General Assembly not only provide for the maintenance and support of a thorough and efficient system of public education, but ensure all students succeed equally irrespective of social, economic, family or personal situation." Cutler Br. 5; *see also id.* 36. But the Court did no such thing: it was explicit that "[o]pportunity does not mean achievement of guaranteed success, but instead connotes availability and occasion." Op. 634 (internal citation and quotation marks omitted). Leader Cutler also suggests that the Court has interpreted the Education Clause "to require the General Assembly to ensure that school districts have sufficient funding to obtain all educational resources that they believe might benefit students regardless of cost or to implement what they consider to be sound financial practices." Cutler Br. 27; *see id.* 45. In reality, the Court stressed that "the system need not be uniform. Rather, so long as it provides all students with a meaningful opportunity to succeed academically, socially, and civically, by providing them a comprehensive, effective, and contemporary education, the system passes constitutional muster." Op. 636.

The Court's standard is judicially manageable. Legislative Respondents' attempts to avoid acknowledging that standard's clear mandate to the General Assembly should be rejected.

B. THE COURT CORRECTLY HELD THAT PETITIONERS ARE ENTITLED TO RELIEF ON THEIR EDUCATION CLAUSE CLAIM

1. The Court applied the proper legal framework to evaluate Petitioners' Education Clause Claim.

Having established what the Constitution requires, the Court next evaluated the elements of Petitioners' Education Clause claim. Like other courts across the nation, this Court assessed the sufficiency of funding available to districts, the educational resources districts are able to provide with that funding, and the outcomes that result from those resources. Op. 675-729; s*ee also, e.g.*, *Maisto v. State*, 196 A.D.3d 104, 111 (N.Y. App. Div. 2021) (examining whether a "defendant has provided inadequate inputs—such as physical facilities, instrumentalities of learning and teaching instruction—which has, in turn, led to deficient outputs, such as poor test results and graduation rates"); *Gannon v. State*, 390 P.3d 461, 488 (Kan. 2017) ("[I]t is appropriate to look . . . to both the financing system's inputs, *e.g.*, funding, and outputs, *e.g.*, outcomes such as student achievement."); *Martinez v. State*, No. D-101-CV-2014-00793, 2018 WL 9489378, at *12-20 (N.M. Dist. Ct. July 20, 2018) (same).

Legislative Respondents fail to identify any actual errors in this framework. Instead, they ignore binding precedent, misconstrue the record, and cast aspersions on this Court. Their arguments should be rejected.

i. The Court correctly declined to apply the reasonable relationship test to evaluate Petitioners' claim.

This Court was tasked with assessing "the adequacy of the current funding scheme relative" to the Constitution's meaning. *William Penn II*, 170 A.3d at 457. Yet Leader Cutler suggests this work need not have occurred, because both the standard and the outcome of its assessment were hiding in plain sight all along: the reasonable relationship test. Cutler Br. 28-32. As he did before, Leader Cutler gleans all of this from overruled decisions that the Supreme Court held "def[y] confident interpretation," with "dubious" arguments, and which suffer from "irreconcilable deficiencies in . . . rigor, clarity, and consistency." *William Penn II*, 170 A.3d at 441, 444, 449, 451, 457. Leader Cutler has made this argument before. *See* Cutler Br. 21-25; Petitioners' June 1, 2022 Post-Trial Brief ("Pet'r Br.") 34-36; Pet'r Reply Br. 46-47. He remains wrong.[4]

[4] Leader Cutler also fails to mention that the majority not only took *Danson v. Casey*, 399 A.2d 360 (Pa. 1979) and its progeny apart piece by piece, but questioned whether *Danson* ever actually applied the reasonable relationship test in the first instance, noting that the decision's "internal tensions" seemed to conflate a purported application of the reasonable relationship test, the political question doctrine, and standing. *See William Penn II*, 170 A.3d at 443. In total, the majority held there was "precisely . . . one unequivocal proposition that may reasonably be inferred" from the *Teachers' Tenure Act Case*, *Danson* and *Marrero*: that the Commonwealth's education system must be a contemporary one "in response to changing needs and innovations." *Id.* at 448.

Leader Cutler acknowledges that even the dissent in *William Penn II* concluded that the reasonable relationship test "should not have been applied in cases seeking to enforce legislative obligations," but then nonetheless argues that the reasonable relationship test should apply in this case, which seeks to enforce legislative obligations. Cutler Br. 31. There is a reason for this logical disconnect: Leader Cutler is searching for a conclusion, not a standard. As the Supreme Court's dissent noted, "the reasonable-relation standard amounts to virtually **no standard at all**" and it cannot be used "to evaluate whether a branch of state government has fulfilled its constitutional obligations." Op. 672-73 (citing *William Penn II*, 170 A.3d at 484, 486 (Saylor, C.J., dissenting)). But this "no standard" standard is Leader Cutler's point: this Court should not have assessed whether the school funding system *actually meets* constitutional requirements. Instead, it should have simply examined whether unspecified pieces of legislation passed by the General Assembly "reasonably relate[] to the purpose of the Education Clause," and close the case. However, to do so would have ignored the Supreme Court's directive in this case: constitutional interpretation requires more than a rubber stamp.

ii. The Court properly exercised its authority as factfinder.

In its role as a trial court presiding over a non-jury trial, this Court properly acted as the factfinder, resolving "[q]uestions of credibility and conflicts in the

evidence." *Adamski v. Miller*, 681 A.2d 171, 173 (Pa. 1996) (citation omitted). Legislative Respondents attempt to recast the Court's exercise of its authority as error. They posit that "[i]f this were an ordinary civil action governed by a preponderance of the evidence standard," the Court's "method" of "weighing the competing evidence and determining which it found to be more persuasive would be appropriate." Cutler Br. 26. But they argue that because Legislative Respondents are entitled to a "presumption of constitutionality," this Court should have simply deferred to Legislative Respondents and decided any "contested" evidence in their favor. *Id*. 27; *see also* Ward Br. 10-12. This argument is nothing more than the repackaging of Respondents' meritless claim that under a "clearly, plainly, and palpably" burden of proof, this Court cannot accord weight to any piece of evidence a "reasonable legislator" could disagree with. *See, e.g.*, Cutler Post-Trial Br. 63; Pet'r Reply Br. 47-50.

As before, Legislative Respondents fail to offer any authority for their position, because there is no law to support it. One of the rudimentary principles of the judicial system is that "the fact-finder is free to believe all, part or none of the evidence presented." *Hoffman*, 938 A.2d at 1160. And the role of making credibility determinations, drawing inferences, making findings, and weighing the totality of that evidence is for the factfinder no matter the burden of proof. *See Commonwealth v. Smothers*, 920 A.2d 922, 926 (Pa. Commw. Ct. 2007) ("As the

ultimate fact finder, the trial court must weigh the evidence and draw any reasonable inferences from the evidence. . . .") (clear and convincing standard); *Commonwealth v. Ransome*, 402 A.2d 1379, 1381 (Pa. 1979) ("[T]he factfinder is free to believe all of, part of, or none of the evidence, . . . and all inferences properly deducible from that evidence.") (beyond a reasonable doubt standard). In other words, a "clearly, plainly, palpably" burden of proof does not create an irrebuttable presumption of constitutionality or in any way alter this Court's fact-finding authority. *See League of Women Voters v. Commonwealth*, 178 A.3d 737, 741 (Pa. 2018) (adjudging competing evidence, determining credibility of competing experts, and finding the Constitution clearly, plainly, and palpably violated); *Applewhite v. Commonwealth*, No. 330 M.D. 2012, 2014 WL 184988 (Pa. Commw. Ct. Jan. 17, 2014) (same).

When this matter's vast record was put on the scales, the Court weighed the evidence and appropriately held that the Commonwealth has clearly, plainly, and palpably failed to live up to the mandate of the Education Clause.

2. The Court's factual determinations were amply supported by the record.

Across fourteen weeks, the Court assembled an exhaustive factual record. The Court considered testimony from scores of witnesses, state officials, school leaders, and experts. It examined state standards and validation studies. It admitted

hundreds of documents summarizing millions of pieces of data, and examined spreadsheets and inches-thick regulatory documents.

This Court then synthesized that information and reached two key conclusions. First, the Court found that low-wealth school districts like Petitioners do not have the ability to provide all students with a contemporary, effective, and comprehensive education, and face manifest deficiencies "regarding inputs, such as funding, courses, curricula and programs, staffing, facilities, and instrumentalities of learning"—"the very resources state officials have identified as essential to student achievement." Op. 774.

Second, the Court found that "the effect of this lack of resources shows in the evidence of outcomes," including "extensive credited evidence" demonstrating wide achievement gaps on a variety of measures "between students who attend schools in a low-wealth district and their peers who attend schools in a more affluent district," with even wider gaps when student subgroups are examined. Op. 774.

Legislative Respondents dispute these conclusions. But in order to obtain post-trial relief, Respondents must do more than just suggest that "another trial judge would have ruled differently"—they must demonstrative objective mistakes in this Court's findings. *Harman ex rel. Harman v. Borah*, 756 A.2d 1116, 1122 (Pa. 2000). Unable to carry this heavy burden, they resort to attacks, attempting to

dismiss this Court's comprehensive findings as an "analysis [that] amounted to highlighting any facts that it believed would support its conclusion, while ignoring a multitude of facts that do not." Ward Br. 26. Legislative Respondents' claims are as wrong as they are audacious.

i. The Court did not make "impermissible policy determinations."

In their most general broadside against this Court's work, Legislative Respondents suggest that this Court "moved itself into the posture of a policy maker," Ward Br. 8, and was merely "resolv[ing] . . . public policy debates," Cutler Br. 26. Stated another way, they "accuse[] the [C]ourt . . . of substituting its own 'policy judgments and preferences' to dictate how the General Assembly should regulate" schools. *Robinson Twp.*, 83 A.3d at 925. If this attempt to contort the deprivation of a constitutional right into a mere policy dispute sounds familiar, it should: it is the very same justiciability argument Legislative Respondents have resurrected year after year in every phase of this litigation. *See, e.g.*, Legislative Respondents' November 24, 2015 Brief to the Pennsylvania Supreme Court at 41-42 ("[T]he instant matter simply expresses a public policy disagreement over how Pennsylvania's legislature has chosen to fund public schools. . . . 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."); Speaker Cutler's June 4, 2021 Pre-Trial Statement at 1 ("Petitioners' grievances consist

primarily of public policy disagreements with the decisions made by Pennsylvania's elected representatives."); Corman Post-Trial Br. at 2 ("This Court should not enter into the political fray by choosing one set of policy viewpoints over another."). And it is the very same argument the Supreme Court has already expressly rejected. *William Penn II*, 170 A.3d at 463 ("It is a mistake to conflate legislative policy-making pursuant to a constitutional mandate with constitutional interpretation of that mandate and the minimum that it requires.").

This Court held a trial, not a debate. Based on the evidence presented, it drew conclusions about whether and which kinds of educational resources have been demonstrated to help students learn, whether the General Assembly provides sufficient funding for school districts to offer those resources, and how that funding and those resources impact student outcomes. Legislative Respondents provided the Court with little credible evidence to consider on many of these issues, and admitted or failed to effectively contest many other facts in the record. *See infra* Section IV.B.2.ii-iv.

It is disingenuous to suggest that the conclusions the Court drew from this record are nothing more than the Court "pick[ing] sides in certain ongoing policy debates," Ward Br. 11, or "substitut[ing] its own judgment on these heavily studied and debated policy issues," Cutler Br. 24. As the record makes plain, Legislative Respondents made their legislative and policy choices. It is the province of this

Court "to check acts or omissions by the other branches in derogation of constitutional requirements." *William Penn II*, 170 A.3d at 418. Legislative Respondents' suggestions that this Court stuck its thumb on the scale fail.

ii. There is no legitimate "debate" about whether all children can learn.

One factual underpinning of this Court's opinion was that all children can learn. That is, when children are provided adequate resources, their outcomes improve and they are far more likely to succeed. *See, e.g.*, Op. 716-18. This was not a "policy ideal[]," Cutler Br. 55, but a finding of fact based on the overwhelming evidence presented by witness after witness, including Respondents' own, *see, e.g.*, Op. 65, FOF ¶ 251 (PDE believes that "when presented with the high quality resources and appropriate instruction and all the other elements of an effective school system, that every child can be successful."); *id*. 534, FOF ¶ 2142 ("Mr. Willis testified the challenges from poverty are not insurmountable. He acknowledged that there are key strategies and interventions that have been proven to improve students' outcomes, especially among at-risk, low-income students."); *id*. 565, FOF ¶ 2206 (Dr. Hanushek "agreed that the challenges of poverty are not insurmountable if the resources are used well."); *id*. 540, FOF ¶ 2157 ("Dr. Koury gave credence to the research of Petitioner's expert Dr. Johnson, which confirmed that increased school funding has a positive, causal

effect upon student outcomes throughout the school trajectory," identifying, among other things, pre-K and class size reductions as important interventions).

Ignoring the weight of the evidence presented, Legislative Respondents characterize "[t]he ability of schools to effectively address academic challenges" caused by out-of-school-factors as a matter of "ongoing academic debate," Cutler Br. 24, and argue that the Court's evaluation of the current system "conflate[d] opportunity and outcome," *id.* 55, and erroneously "overlooked the overwhelming evidence that Pennsylvania public schools do provide opportunities for students in all school districts, even though such opportunities admittedly remain more difficult for some students to access than for others." *Id.* 60 (emphasis omitted). But this was precisely the Court's point: to have a meaningful opportunity to succeed, students must be given the resources necessary to *access* that opportunity: the resources that make up a contemporary, effective and comprehensive education. Op. 716-17. And based on the totality of the evidence presented, the Court correctly concluded that access to this opportunity for all children was lacking. *Id*. 729.

Legislative Respondents do not point to any credible evidence to the contrary: their claim of "error" is simply a disagreement with the Court's factual findings, and an effort to constitutionally enshrine a cynicism that is not supported by the record.

iii. The Court's conclusion that schools are underfunded reflects voluminous record evidence including the Commonwealth's own admissions, not mere "disagreement" with a "policy decision."

The Court found that the school funding system was inadequately funded based on the voluminous evidence introduced by Petitioners that district after district could not afford to provide safe, adequate facilities, sufficient staff, instrumentalities of learning, or curricula. *See* Op. 681-707; *cf. In re Formation of Indep. Sch. Dist. Consisting of Borough of Highspire, Dauphin Cnty.*, 260 A.3d 925, 940 (Pa. 2021) ("Educational resources are not free – teachers, buildings, school supplies, computers, etc. all need to be financed."). It also concluded that "the Costing Out Study, the subsequent calculation of adequacy targets and shortfalls, the BEF Commission, the Fair Funding Formula, and the Level Up Formula, all credibly establish the existence of inadequate education funding in low wealth districts like Petitioners, a situation known to the Legislature." Op. 678-79.

Once again, Leader Cutler does not identify any mistakes in these findings, but instead claims that the Court erred in the inferences it drew from them, insisting that the Legislature's actions "reflect policy decisions made by the General Assembly to get additional money to lower-wealth school districts, not an acknowledgment that the prior funding levels were constitutionally inadequate."

Cutler Br. 46. His assertion suggests that even the Commonwealth's calculation of "adequacy shortfalls" is not probative of the existence of adequacy shortfalls.

Leader Cutler supports his argument with supposition rather than evidence. Admitting that the Commonwealth ultimately stopped making adequacy calculations, he posits that one could "easily conclude that the General Assembly changed the law because it determined that the Costing Out Study and adequacy targets/shortfalls were ***not*** useful considerations in determining how best to fund public education." Cutler Br. 46 (emphasis in original). But Leader Cutler never made this argument at trial, and there is nothing in the record to support his new assertion. To the contrary, Leader Cutler put forth an expert who admitted that determining necessary funding for schools is a first-order priority: "[t]o design a funding system that effectively supports the state's education goals, states should first establish clear, measurable targets for student achievement and then determine and provide the necessary education funding to achieve these goals." Op. 538, FOF ¶ 2153. Leader Cutler's only other witness on the matter conceded that the General Assembly does not attempt to measure what funding schools should have, either on account of their needs or the state's goals, and proclaimed that adequacy targets were too expensive. *See* Op. 91, FOF ¶ 349; *id.* 118, FOF ¶ 468. And neither of those witnesses knew whether any schools were underfunded, *see id*. 531, FOF ¶ 2137 (Willis); Petitioners' May 2, 2022 Proposed Findings of Fact ("Pet'r FOF")

¶¶ 456-64 (Donley), even though one of them was qualified as an expert in part because he routinely makes such judgments. *See* Op. 531, FOF ¶ 2136.

The Court properly relied on this record in support of its conclusion that the system was underfunded. Leader Cutler's request that the Court should now disregard the evidence presented at trial and instead indulge his speculation should be rejected.

iv. The Court's conclusions about the need for essential educational strategies were based on the Commonwealth's expertise and admissions, not the Court's "own judgment."

This Court correctly held that the Constitution requires providing children a meaningful chance to succeed academically, socially, and civically. Such a standard requires that school districts provide children the resources to learn, and school districts therefore must have the capacity and ability to acquire those resources.

Legislative Respondents suggest that the extensive deficiencies noted by the Court in these educational resources are simply the "grievances" of school districts that will always want more. Cutler Br. 48. Leader Cutler boils down the gaping holes in professional staff to nothing more than "lack of other staff whom Petitioners and their experts believe might help students to succeed." *Id*. 49. He reduces the Court's findings of deficiencies in curricula into a quibble over electives, countering that "even at the best-endowed universities, students may be

limited in what electives they can take." *Id.* 47. He dismisses Petitioners' chronic inability to keep up with basic computer technology as a "worry" for the "future." *Id*. 53. And he brushes off the Court's conclusion that these and other interventions would allow far more children to succeed as nothing more than an "admirable goal." *Id*. 36.

In fact, what this Court rightly found was consensus that Petitioners are "lacking the very resources *state officials* have identified as essential to student achievement." Op. 774 (emphasis added). Petitioners, their experts, Respondents, and *their* experts all recognize that a modern education system must contain certain essential elements. *Id.*; s*ee also, e.g.*, *id*. 63-65, FOF ¶ 249 ("Through its ESSA Plan and elsewhere, the Department has identified strategies that will help students become college and career ready, best ensure student success, and close achievement gaps.") (listing strategies); *id*. 633, citing FOF ¶¶ 314-15 (noting that the General Assembly has itself directed funding toward strategies such as early intervention, pre-K, and the student needs targeted by Ready-To-Learn Block Grants, which include smaller class sizes and increases in technology instruction); *id*. 534-37, FOF ¶¶ 2141-48 ("The Court credits, and is persuaded by, Mr. Willis's testimony that supports conclusions related to the importance of school funding in improving student outcomes through the implementation and sustaining of interventions and strategies.") (listing strategies); *id*. 540, FOF ¶ 2157 ("Dr. Koury

was one of several expert witnesses on both sides to testify that some children need more educational resources, such as supports and services, to learn than those children who do not have specific needs."); *accord Borough of Highspire*, 260 A.3d at 939 (noting that the General Assembly's "policy choices" reflect a "recogni[tion] that funding is fundamental to providing" the "facilities and resources necessary for a quality public education.").

The Court correctly held these elements are both critical to success and pervasively lacking in Petitioner districts and low-wealth school districts like them.

3. The Court properly weighed outcome data to evaluate how the system is performing.

This Court, like state courts across the country, examined how the education system was performing overall, by district, by wealth, by subgroup, and for each of the Petitioners. It had good reason to do so: "Otherwise, there would be no way to gauge the adequacy of the system, and whether it is working to provide the opportunity to succeed to all students." Op. 707 (collecting cases). Indeed, the Legislature itself has recognized the role that outcomes play in assessing constitutional compliance by directing PDE to create an assessment system to aid the Legislature in fulfilling its constitutional duty. *See* 24 P.S. §§ 2-290 and 2-290.1.

To evaluate the education system, the Court considered a wide range of outcomes, from those that state law requires "to measure objectively the adequacy

and efficiency of the educational programs offered by the public schools of the Commonwealth," Op. 569, FOF ¶ 2214, to high school graduation rates, post-secondary success, results from national assessments, and more. *Id*. 707-29.

Legislative Respondents, however, assert that in doing so this Court "elevates policy ideals to constitutional mandates and assigns constitutional significance to preferred educational policies," Cutler Br. 55; *see also* Ward Br. 31. Once again, their argument is notable for what it does not say: Legislative Respondents do not contest the importance their own laws place upon PSSA and Keystone exams, including those assessments' roles in designating schools as "low achieving." *See* Op. 709-12; *id*. 56, FOF ¶¶ 220-21. Legislative Respondents do not contest the failure of their proffered expert on assessments to provide credible testimony supporting their theories about assessment design and efficacy. *See id*. 710-11. They do not contest that another one of their own experts identified both end-of course exams and post-secondary success as valid measures for judging the success of a school system. *See, e.g.*, *id*. 538, FOF ¶ 2154 (Willis). They do not seriously quarrel with the mathematical shortcomings of the PVAAS model, as identified by PDE officials and basic arithmetic alike, or dispute that their own expert failed to use PVAAS data in a credible way, *id*. 720-22, and "ultimately agreed that if the PVAAS model is to be believed, then it already controls for whether a student attends an underfunded district." *id*. 545-46, FOF ¶ 2168. And

Respondents do not deny that the outcome measures they now seek shelter in, such as high school graduation rates and PVAAS data, were in fact part of this Court's assessment of the system. *Id*. 718-22, 723-26.

Ultimately, Legislative Respondents' argument is simply that the Court should have valued the outcome data differently. But as detailed *supra,* assigning evidence weight is the prerogative of this Court as fact-finder. Legislative Respondents' claim that the Court "constitutionalized" certain outcome measures over others is, at base, just a wish that this Court had created a constitutional standard around measures that gave Respondents' system better marks.

4. Legislative Respondents' assertion that this Court selectively "ignored" facts is groundless.

Legislative Respondents proclaim that this Court "failed to acknowledge, let alone discuss, a multitude of its own findings of fact that undermine its conclusion." Ward Br. 18-19. But this remarkable assertion is categorically refuted by the depth and breadth of this Court's Opinion.

For example, Senator Ward declares that this Court "ignored" that Panther Valley's teachers have college degrees and teaching certificates. Ward Br. 19-20 (citing Op. 155, FOF ¶ 630). Senator Ward does not explain why having certified teachers with college degrees *ipso facto* equals a constitutionally compliant system. But regardless, the Court's *very next finding* flatly contradicts Senator Ward's accusation:

> 631. However, while Panther Valley's teachers have a teaching certificate, not all of them have certificates in the subject area they teach. Panther Valley has difficulty filling vacant positions with certified teachers and as a result, it has had to hire several teachers that are not certified to teach the courses for which they are hired. (Tr. at 310-11.) For example, Panther Valley had to hire a social studies teacher to teach Algebra I, which is a Keystone-tested subject. (Tr. at 312.) As Superintendent McAndrew explained,
>
> > I see these teachers, they're doing everything they can . . . [but] [t]hey're not teaching the material that they went to college to learn. So these . . . teachers are going home every night to reteach themselves certain areas. They don't know the pedagogy that goes into it. They're trying their best . . . . But it's difficult when you spent four years of college learning a certain content and then saying, okay, now let's go teach this [different] content.

Op. 155-56, FOF ¶ 631. If that wasn't clear, the Court explained it again. *See id*. 690 ("While Legislative Respondents claim Panther Valley's teachers all hold teaching certificates, some of those certifications are in subject areas that differ from the courses they teach, such as the social studies teacher hired to teach Algebra I."). It is clear that this Court did not "ignore" or "disregard" the status of Panther Valley's teaching staff. Rather, it considered those facts in context, explaining their role in the dire situation caused by inadequate school funding.

Of course, educators teaching outside of their expertise was not the only fact the Court considered about Panther Valley's professional staff. It also found, among other things, that Panther Valley:

- Had troublingly high class sizes, even for its youngest students, Op. 162, FOF ¶¶ 661-62;

- Lacked sufficient numbers of special education teachers, *id*. 156, FOF ¶ 632;
- Lacked sufficient numbers of teachers to provide remediation and small group instruction, resulting in a "coin flip" to determine whether students get the services they need, *id*. 158-59, FOF ¶ 643;
- Had principals serving as a school psychologist, grant writers, and security director, *id*. 158, FOF ¶ 642;
- Lacked sufficient numbers of school counselors, *id*. 159, FOF ¶ 645;
- Employed no librarians, *id*. 160, FOF ¶ 650;
- Employed no truancy staff to improve attendance, *id*. 160, FOF ¶ 651; and,
- Lacked sufficient "money, teachers, or space" to provide pre-K to all children eligible, *id*. 174, FOF ¶ 719.

All of this forced the Superintendent into a Hobson's choice:

> Every decision we make, . . . in the backgrounds of our minds, it's how are we going to fund this? Even the decisions we make, it's, okay, this is going to hurt this population, but we're going to make it because we need to help this needier population. But often someone's getting shortchanged.

Id. 192-93, FOF ¶ 810.[5]

Senator Ward's pronouncement that this Court "ignored" Panther Valley's PVAAS/AGI scores on PSSA is equally baseless. Rather, the Court noted that on PSSAs, two-thirds of Panther Valley test-takers were scored as either progressing

[5] This was only one of many inadequacies found in Panther Valley. *See, e.g.*, Op. 181-83, FOF ¶¶ 758, 760-765 (detailing serious facilities deficiencies).

or not falling further behind. And the Court spent pages examining PVAAS, noting what it found useful and describing its limitations. Op. 544-47, 718-22. Accordingly, the Court expressly cautioned against viewing it in isolation, because growth measures "can be misleading when viewed alone or out of context and should be considered in the context of other measures of achievement." *Id*. 722.

That context for Panther Valley includes, for example:

- Just 42% of Kindergartners were on level, with 33% "so behind that they needed 'intensive' interventions," *id*. 174, FOF ¶ 720;
- Two of Panther Valley's three schools were labeled as low-achieving pursuant to state law, *id*. 576-77, FOF ¶ 2225;
- Approximately half of Panther Valley's students do not score proficient on ELA/Literature, *id*. 569, FOF ¶ 2215, while approximately three-quarters do not score proficient on math/Algebra, *id*. 570, FOF ¶ 2216;
- Economically disadvantaged students in Panther Valley fare far worse on state exams than economically disadvantaged students in wealthy districts, *id*. 587, ¶ FOF 2246;
- Panther Valley students average 966 on the SATs, *id*. 593, ¶ FOF 2259;
- Twenty percent of Panther Valley students fail to graduate high school in four years, placing the district in the bottom ten percent of the state, *id*. 594-95, FOF ¶ 2261; and,

- Of those students who graduate, only 43 percent enroll in a two or four-year college, *id*. 597, FOF ¶ 2267; *id*. 598, FOF ¶ 2270.

By similar token, Leader Cutler also suggests this Court was only presented with a "slanted" view of the state of facilities. Cutler Br. 51. In reality, the Court evaluated all the evidence presented at trial, which included statewide admissions about the state of facilities for low-wealth districts, Op. 110, FOF ¶ 431; *id*. 115, FOF ¶ 456, along with repeated instances of "makeshift classrooms set up in hallways, closets, and basements, insufficient numbers of nearby restrooms to serve students, and schools without functioning heat and air conditioning," *id*. 698, leaking roofs, crumbling facilities, mold, and more. *See, e.g.*, *id*. 182, FOF ¶¶ 760, 762; *id.* 291, FOF ¶ 1250; *id*. 334, FOF ¶ 1451; *id*. 698-702.

The Court also found, among other things: William Penn and Philadelphia paid for district-wide facilities surveys to assess the cost of fixing their schools that resulted in staggering estimates they could not afford, *id*. 339, FOF ¶ 1468; *id*. 361, FOF ¶¶ 1580-81; Wilkes Barre was forced to furlough staff to build a new high school, *id*. 290 FOF ¶ 1247; Philadelphia deferred maintenance to try to save as many professional staff as it could, *id*. 361, FOF ¶ 1582; and Greater Johnstown closed a school to keep the district solvent, resulting in "inadequate space to educate its students," *id*. 143, FOF ¶ 579.

In the face of all of this, Leader Cutler's claims of "error" again boil down to two spurious criticisms. First, he suggests this Court ignored evidence in the record that Petitioner districts did have some facilities that were safe and modern, despite the fact that this Court squarely considered that evidence and explained why it was insufficient to demonstrate constitutional compliance. *See* Op. 698 ("However, it is not enough that the facilities in which students learn are 'generally safe,' as Legislative Respondents contend. Rather, they must be safe, and adequate.") (internal citations and emphasis omitted). Second, Leader Cutler complains that "the evidence presented at trial . . . did not provide a complete and accurate picture of the school facilities at Petitioner Districts, let alone throughout the Commonwealth's 500 school districts," Cutler Br. 52, ignoring that Leader Cutler was free to introduce evidence at trial to support any assertion he wished to make.

Legislative Respondents' misrepresentations of what this Court purportedly "selectively disregarded" go on. *Compare, e.g.*, Ward Br. 23, 25 (alleging this Court ignored that Wilkes Barre had a STEM Academy) *with* Op. 282, FOF ¶ 1210 (noting that the STEM Academy only has staff for approximately 12 percent of students, and prerequisites mean that participation is not feasible for many); *or* Ward Br. 25 (alleging this Court ignored AGI scores for Philadelphia) *with* Op. 113, FOF ¶ 446 (explaining distortion in PVAAS results, which Philadelphia's AGI scores "illustrate"); *or* Cutler Br. 49 (claiming the Court determined, in part,

"staffing was deficient" because of a "lack of other staff whom Petitioners and their experts believe might help students to succeed") *with* Op. 774 ("Educators credibly testified to lacking the very resources state officials have identified as essential to student achievement. . . .").

This Court did not ignore anything. To the contrary, it conducted an exhaustive evaluation of the evidence presented, made credibility determinations, and appropriately reached conclusions based on the entire record.

5. The Court properly found system-wide deficiencies.

Senator Ward suggests that this Court erred in concluding that the public education system suffered from "systemic" inadequacies. Ward Br. 14-15. She argues that without evidence from more school districts (or, apparently, without an explication of the state of Pennsylvania's public libraries, *id.* 15), this Court could not have found Respondents violated the Constitution. Senator Ward is mistaken.

This Court's work was extensive, identifying numerous ways that all low-wealth school districts are systemically deprived of sufficient inputs—both funding and resources. For example, the Court considered a comprehensive statewide analysis of how the school funding system works and how it fails, where the school districts who need the most have the least, despite trying the hardest. *See, e.g.*, Op. 418-46. That included, among other things, credited testimony that "Pennsylvania has one of the largest gaps of any state in the country in per child spending

between the Commonwealth's poorest and wealthiest districts." *Id*. 423-24, FOF ¶ 1887.

The Court did not stop there. It found that PDE itself admitted the system was inadequately funded, and identified specific examples in which PDE testified that low-wealth districts across the Commonwealth consistently lack sufficient resources to educate their students. *See, e.g.*, *id*. 104, FOF ¶ 409 (low-wealth districts "often do not have enough educators to provide this individualized instruction, which contributes to achievement gaps"); *id*. 115, FOF ¶ 455 (low-wealth school districts struggle with adequate technology), *id*. 115, FOF ¶ 456 (low-wealth school districts have insufficient ventilation systems), *id*. 110, FOF ¶ 431 (low-wealth districts especially "face serious safety concerns related to exposed asbestos and lead in school buildings," which existing funding sources are not sufficient to remediate); *id*. 103-104, FOF ¶ 406 (there is a lack of sufficient space in Pennsylvania's Pre-K Counts program, with only 40% of eligible children being served statewide); *id*. 578-80, FOF ¶¶ 2231, 2236 ("The Department also acknowledges that funding inequities are one of the 'fundamental root causes' of these [achievement] gaps and that increased funding is necessary to address them" and "achievement gaps are caused, in large part, by the lack of resources in the low-wealth districts where students of color are disproportionately educated."). The Court also identified numerous ways in which the General Assembly has itself

admitted the system is underfunded. *See infra* Section IV.B.2.iii. And it found that PDE acknowledged that the "depth of existing inequities" in the Commonwealth are so longstanding and profound that the Commonwealth could not even set common achievement goals for children of different races or economic status, even thirteen years into the future. Op. 578, FOF ¶ 2230.

The Court then properly connected this system-wide evidence to the representative examples of inadequate inputs in Petitioners' districts. For example, examining the inability of low-wealth districts to provide reading interventions—an academic support that all parties conceded are both effective and critically important, *see, e.g.*, Op. 105-106, FOF ¶¶ 412-15 (PDE); *id.* 274, FOF ¶¶ 1175-76 (Wilkes Barre), *id.* 314-15, FOF ¶ 1353 (William Penn); *id.* 456-57, FOF ¶ 1971 (Dr. Noguera); *id.* 534, FOF ¶ 2143 (Mr. Willis)—the Court found:

- Low-wealth districts have more students with higher needs, Op. 423, ¶ 1886; and less funding, *id.* 423-24, FOF ¶ 1887; *id.* 425, FOF ¶ 1891; *id.* 706;
- Low-wealth districts generally do not have enough educators to provide reading interventions, *id.* 104, FOF ¶ 409;
- Consistent with this evidence, Petitioner districts have higher numbers of students, including students living in poverty and English learners, who need reading interventions, *see, e.g.*, *id.* 151, FOF ¶ 612; *id.* 154, FOF ¶

627; *id.* 174, ¶ 720; *id.* 196, FOF ¶ 823; *id*. 203, FOF ¶¶ 478, 567, 720, 863; *id.* 246, FOF ¶ 1043; *id.* 270, FOF ¶ 1158; *id.* 307, FOF ¶ 1318; *id.* 346, FOF ¶ 1492;

- Petitioner districts cannot afford to hire sufficient numbers of educators to provide these interventions, *see, e.g*., *id.* 128, FOF ¶ 508 (Greater Johnstown); *id.* 158, FOF ¶ 643 (Panther Valley); *id.* 314-15, FOF ¶ 1353 (William Penn); and,
- Insufficient resources, like an inadequate number of staff that can provide these interventions, cause unacceptable outcomes in low-wealth districts generally, and in Petitioner districts specifically, *see, e.g.*, *id.* 774; and,
- Higher-need students do far better in districts that have more resources, *see id.* 716-17.

Finally, like every other deficiency, the Court found that low-wealth districts cannot solve this on their own: they "are forced to make these difficult decisions because . . . the system is heavily dependent on local tax revenue, which the lower wealth districts cannot generate like their more affluent counterparts." *id*. 697-98.

This is only one set of examples. But it makes plain that Senator Ward's assertion that the record does not support the Court's findings of systemic deficiencies is a fabrication.

6. The Court properly found districts were not the source of the system's deficiencies.

The Supreme Court made clear that "the General Assembly alone must be held accountable, regardless of whether one perceives the cause of the actionable deficiency to exist at the local or state level." *William Penn II*, 170 A.3d at 442 n.40. Despite this admonition, Senator Ward has consistently argued, without citation to any legal authority, that a district's financial woes should be presumed to be the result of district mismanagement unless proven otherwise. *See* Pet'r Reply Br. 52-53. Legislative Respondents now return to this unfounded presumption, and proclaim that this Court "fail[ed] to properly acknowledge" the implications of a record "replete" with "numerous" ways Petitioners "regularly failed to use funding in a way that would have corrected the deficiencies that they alleged." Ward Br. 16-18; Cutler Br. 21. Once again, Legislative Respondents distort the record and then accuse the Court of error.

This Court examined annual school district budgets that ranged from $19 million, Op. 266, FOF ¶ 1144, to $4 billion, *id*. 365, FOF ¶ 1604. The "replete" record of fiscal mismanagement referenced by Legislative Respondents consists of a grand total of six supposedly poor decisions made across many years in five school districts. As an initial matter, these accusations of "mismanagement" strain credulity: Respondents attacked Shenandoah Valley for saving money (for a boiler and other uses), Panther Valley for spending it (on added courses), and Greater

Johnstown for spending it upfront to save it later (for lights). *See* Legislative Respondents' May 2, 2022 Proposed Findings of Fact at ¶ 2344. Moreover, the Court did consider these decisions, and concluded that they had sound rationales: for example, the Court noted that Greater Johnstown's decision to replace field lights at once, rather than piecemeal, allowed the district to realize "considerable savings," Op. 145, FOF ¶ 587; *see also, e.g.*, *id*. 168, FOF ¶ 689 ("Superintendent McAndrew testified the courses were added in an effort to better prepare students for proficiency on the Keystone Exams and provide students with a more well-rounded education."); *id.*, FOF ¶ 1148 (finding that Shenandoah Valley "will need to use its fund balance to replace a 40-year-old coal-fired boiler that is already 15 years past its expected life cycle, to buy vans for special education students, and to replace the technology that is now required in a post-pandemic society.").

* * *

In sum, all of Legislative Respondents' arguments that the Court erred in finding a violation of the Education Clause are meritless. The standard for post-trial relief is high: Legislative Respondents' claims of error, which disregard the Court's careful consideration of the facts and the law, fall far short.

C. THE COURT CORRECTLY HELD THAT PETITIONERS ARE ENTITLED TO RELIEF ON THEIR EQUAL PROTECTION CLAIM

The Court applied the correct legal framework relevant to Petitioners' equal protection challenge, which claimed that the current funding system impermissibly burdens the right to public education of students in low-wealth districts. First, the Court engaged in an analysis of the nature of the right infringed and concluded that education is a fundamental right. Op. 749-60, 769. The Court accordingly applied strict judicial scrutiny, *id*. 760-73, analyzing whether there was a "compelling government interest that justifies the distinction" created by the school funding system's treatment of students in low- and high-wealth districts, and concluding there was not. *Id.* at 770-73.

It is Legislative Respondents' burden to demonstrate clear error in this Court's work. *Lahr*, 972 A.2d at 47. Yet Legislative Respondents do not meaningfully challenge the reasoning or integrity of this analysis; instead, they bypass it in favor of old arguments and inapposite legal concepts.

1. The Court correctly determined that the Education Clause confers a fundamental right.

Senator Ward's claims of error concerning the Court's equal protection analysis center on Senator Ward's belief that the Court "ignored a number of important points that are described in Senator Ward's Post Trial Brief" regarding

whether education is a fundamental right. Ward Br. 26. But the Court did not ignore these points: it simply found them lacking, and rightly so.

First, Senator Ward asserts that "the Court did not materially address" her contention that the Education Clause does not confer a right to education because it "does not make an express reference to the people who hold the right and . . . instead, simply imposes a duty on the General Assembly." Ward Br. 27. However, the Court did thoroughly address this argument and rejected it, explaining:

> The Education Clause indisputably imposes a **duty** on the General Assembly to maintain and support "a thorough and efficient system of public education." PA. CONST. art. III, § 14. The parties dispute whether the Education Clause creates a corresponding **right** to a public education in students and if so, what type of right. The Court determines the Education Clause, at least implicitly, creates a correlative right in the beneficiaries of the system of public education—the students.

Op. 745 (emphasis in original); *accord William Penn II*, 170 A.3d. at 461 n.68 ("[T]o disregard the beneficiaries of a mandate is to render that mandate little more than a hortatory slogan."); *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 166 (1803) ("[W]here a specific duty is assigned by law, and individual rights depend upon the performance of that duty, it seems equally clear that the individual who considers himself injured, has a right to the laws of his country for a remedy."). In support of its conclusion, the Court cited education's central role in the Pennsylvania

Constitution and cases from other jurisdictions in which state education clauses imposing a duty were found to confer a correlative right. Op. 746.

Senator Ward also incorrectly claims that the Court "largely glossed over" the argument that the Education Clause cannot confer a right because it is not found in the Declaration of Rights. Ward Br. 27-28. To the contrary, the Court engaged in an extended *Edmunds* analysis, including a pages-long inquiry into other jurisdictions' treatment of arguments similar to those presented by Senator Ward, and concluded that "the Court is not persuaded that the Education Clause must appear in the Declaration of Rights to be fundamental; rather, the Court looks to whether the Constitution provides for the right explicitly or implicitly." Op. 756 (citing *James v. SEPTA*, 477 A.2d 1302, 1306 (Pa. 1984)); *see also id.* 749-50 (noting *Skeen*'s rejection of Senator Ward's argument that any right must reside in the Declaration of Rights, and emphasizing that "at no time has the Pennsylvania Supreme Court held it is necessary for fundamentality"); *see also id.* 750-51 (noting that the *Campbell* court's conclusion that education was a fundamental right "did not rely on the Declaration of Rights provision in isolation."). Senator Ward's accusations that the Court did not "wrestl[e] with these points, and

explain[] how, in its view, they factor into the analysis (or not)," Ward Br. 28, are specious.[6]

Senator Ward also asserts that the Court "declined to analyze" the 1967 revisions to the Constitution that removed the phrase "children . . . over the age of six years" from the Education Clause. Ward Br. 31. This claim is false. The Court considered Respondents' theory about these revisions—that "to the extent that there once was a constitutional right to receive an education, that right was taken out of the charter," Ward Br. 31—and concluded that it lacked merit. Op. 632-33 n.87.

The Court correctly held that the 1874 Education Clause clearly established the guarantee of a thorough and efficient system of education that was "intended to

[6] Senator Ward also argues that "it is impossible to harmonize this Court's determination that . . . [there is] a fundamental right to receive an education with its prior determination that the right to hold and use property is not fundamental." Ward Br. 30 (citing *McSwain v. Commonwealth*, 520 A.2d 527, 530 (Pa. Commw. Ct. 1987)). The nub of this argument appears to be that because *McSwain* concluded there was no fundamental right under Article I, Section 1 to "freely hold and dispose of one's property," despite that provision's placement in the Declaration of Rights and its explicit reference to the right to "acquir[e], possess[], and protect[] property," it would be inconsistent for this Court to conclude that the Education Clause confers a right to education despite its placement in Article III and its failure to use the word "right". Ward Br. 30. This argument grossly oversimplifies the fundamental rights analysis. As this Court explained, the proper inquiry is whether the asserted right "has its source, explicitly or implicitly" in the Constitution, which includes an analysis of the text of the constitutional provision, the history of the provision, and related case law from other states. Op. 744-45 (quoting *James*, 477 A.2d at 1306 and *Commonwealth v. Edmunds*, 586 A.2d 887, 895 (Pa. 1991)). This analysis counsels different outcomes here and in *McSwain*, where the court concluded that the gravamen of Article I, Section 1 – the Pennsylvania Constitution's Due Process clause – entitles "someone deprived of property to due process, [but] due process is not synonymous with a fundamental right." *McSwain*, 520 A.2d at 530.

reach as many children as possible" and provided "children . . . a meaningful opportunity to succeed," and that the language conferring this mandate was incorporated without change when the Clause was revised in 1967. Op. 629-36. The Court also correctly found that the unrebutted historical evidence shows the 1967 revisions were refinements intended to affirm the central tenets of the Clause, not gut it: "[t]he age and appropriations thresholds were removed as obsolete, and it was made explicitly clear that the Commonwealth, not only the children, should benefit from the system." *Id.* 635; *see also id.* 19, FOF ¶¶ 60-61 (citing historical records demonstrating that the amendments "replac[ed] the *obsolete* requirement that all children of the Commonwealth above the age of six be educated," and to convey that "the system of public education should not necessarily be *limited* to serve the needs of the children as the Constitution now provides.") (citations omitted) (emphasis added); *see also* Pet'r Reply Br. 6-11; Pet'r FOF ¶¶ 101-110. Legislative Respondents never introduced any evidence to the contrary.

Senator Ward also rehashes her argument that the removal of the age specification from the Education Clause had the purpose of "broadening" the scope of the Clause "so as *not* to differentiate between levels of education or ages of learners." Ward Br. 29 (emphasis in original). Senator Ward then attempts to connect this theory to the holding of *Curtis v. Kline*, 666 A.2d 265, 268 (Pa. 1995). Senator Ward posits that because the *Kline* court did not recognize an individual

right to post-secondary education in the Pennsylvania Constitution, and there is no age or level of education specified in the Clause, this Court is compelled to conclude that the Education Clause does not guarantee a right to education to any age or level of student at all. Ward Br. 27-29. As Petitioners explained in their post-trial briefing, Senator Ward's argument significantly overreaches, asking the Court to ignore the Clause's plain language, its constitutional history, and the clear consensus around what a "system of public education" *is* required to provide, and to whom it must be provided. *See* Pet'r Reply Br. 57-59.

To that end, Legislative Respondents' suggestions that the Court should have explained why "school-age children" in particular are the beneficiaries of the Clause, or that it erred by using "students" and "school-age children" interchangeably in its analysis, Ward Br. 29-30, are particularly absurd. Respondents have never disputed that in the twenty-first century, a contemporary system of public education includes elementary and secondary education, as evidenced by the long history of its mandatory inclusion by the legislature, and the recognition of its importance in the state standards. *See* 22 Pa. Code § 11.12 ("School age is the period of a child's life from the earliest admission age to a school district's kindergarten program until graduation from high school or the end of the school term in which a student reaches the age of 21 years, whichever occurs first.").

The Court's conclusion that the Education Clause confers a fundamental right to school-age children was grounded in well-settled legal principles and sound reasoning. Senator Ward's claim of error fails.

2. The Court correctly applied strict scrutiny to Petitioners' claim.

In his brief, Leader Cutler asserts new arguments about the proper way to assess the validity of Petitioners' equal protection claim. These arguments were never raised during post-trial briefing or oral argument, and are therefore waived. Pa. R. Civ. P. 227.1(b)(1) ("post-trial relief may not be granted unless the grounds therefor, (1) if then available, were raised in pre-trial proceedings or by motion, objection, point for charge, request for findings of fact or conclusions of law, offer of proof[,] or other appropriate method at trial"); *Reilly by Reilly v. SEPTA*, 489 A.2d 1291, 1300 (Pa. 1985) (finding that it is "not enough to raise new grounds for the first time in post-trial proceedings"). Leader Cutler's new arguments are also meritless.

i. Students in low- and high-wealth districts are similarly situated under the Education Clause.

First, Leader Cutler claims the Court failed to recognize that because low-wealth and high-wealth districts have different levels of need, they are not similarly situated and therefore do not merit uniform treatment under principles of

equal protection. Cutler Br. 8-15. The logical flaws of this argument are legion, and the analytic framework Leader Cutler attempts to invoke is misplaced.

An equal protection violation occurs when the government treats a group disparately as compared to similarly situated individuals, and that disparate treatment either burdens a protected right, targets a suspect class, or has no rational basis. *Small v. Horn*, 722 A.2d 664, 672 (Pa. 1998) (summarizing cases). To be "similarly situated," individuals must only be alike "in all *relevant* respects"—not comparable in every imaginable way. *See Stradford v. Sec'y Pa. Dep't of Corr.*, 53 F.4th 67, 74 (3d Cir. 2022) (quoting *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992)) (emphasis added); *Samad v. Horn,* 913 F.Supp. 373, 376 (E.D. Pa. 1995) ("The defendants mistakenly interpret 'similarly situated' as 'identically situated.'"). Thus, the "similarly situated" inquiry depends on the nature of the equal protection violation asserted: the operative question is whether individuals share commonalities relevant to the disparate treatment asserted. *See Reynolds v. Sims,* 377 U.S. 533, 565 (1964) (equal protection requires "uniform treatment of persons standing in the same relation to the governmental action questioned or challenged.").

Where, as in the instant dispute, an equal protection challenge is based on the claim that a government action has infringed upon a right, the relevant inquiry is whether the affected individuals have the same entitlement to that right as others.

See, e.g., *Pa. Soc. Servs. Union, Loc. 668 v. Com., Dep't of Pub. Welfare, Off. of Inspector Gen.,* 699 A.2d 807, 813 (Pa. Commw. Ct. 1997) (considering whether there was a "similarity of rights which would give rise to a valid equal protection claim") (cited in Cutler Br. 10-11); *More v. Farrier*, 984 F.2d 269, 271 (8th Cir. 1993) (holding that wheelchair-bound inmates in good standing were entitled to the same access to television as other inmates in good standing, and that "[t]he problems that [defendant] may confront in providing appellees access to the chapel, gym, job sites, or other facilities . . . are irrelevant to the determination whether appellees are similarly situated to other inmates with respect to in-cell cable television service.").

Accordingly, the question before the Court in this case was not whether students in low-wealth districts have the same level of need as students in high-wealth districts, but whether they have the same right to a comprehensive, effective, and contemporary public education under the Education Clause. The Court correctly concluded that they do: "it is clear from the history of the Education Clause that the system of public education was intended to reach as many children as possible" and that the Education Clause must be evaluated by "whether **every** student is receiving a **meaningful opportunity** to succeed . . .

which requires that **all** students have access to a comprehensive, effective, and contemporary system of education." Op. 634 (emphasis in original).

Throughout its Opinion, the Court acknowledged the "varying needs of students" in the system, and the fact that some of those students will require additional funding to access their education, *see, e.g.*, Op. 633, but it rejected the idea that those students, because of their increased needs, were not entitled to the same opportunity to succeed. To the contrary, it concluded that "while uniformity may have been rejected" by the framers of the Clause, "equality was not." *id*. 635. Accordingly, students in low- and high-wealth districts are similarly situated in "all relevant respects."

Leader Cutler's attempts to rebut this sound reasoning are premised on inapposite cases, none of which involve an equal protection claim based on the infringement of a right. *See* Cutler Br. 8-11 (citing *Commonwealth v. McCabe*, 230 A.3d 1199, 1206-07 (Pa. Super. Ct. 2020) (classification-based claim); *Nat'l Ass'n of Forensic Couns. v. State Bd. of Soc. Workers*, 814 A.2d 815, 824 (Pa. Commw. Ct. 2003) (class-of-one claim); *Archer v. York City Sch. Dist.*, 227 F. Supp. 3d 361, 371 (M.D. Pa. 2016) (class-of-one claim); *Diop v. Bureau of Pro. & Occupational Affs.*, 272 A.3d 548, 558 (Pa. Commw. Ct. 2022) (classification-based claim);

Lizardo v. Denny's, Inc., 270 F.3d 94, 101 (2d Cir. 2001) (Section 1981 race discrimination and retaliation claim).

And even if Leader Cutler's "similarly situated" analysis were not wrong on the law, it is also riddled with factual and logical errors. Leader Cutler purports to compare districts instead of students, and conflates the wealth of those districts with the needs of its students, despite clear evidence that both low- and high-wealth districts educate students across a spectrum of needs, and that the success of students with higher needs in low-wealth districts lags far behind their peers—even when isolating them by student subgroup. *See, e.g.*, Op. 437, FOF ¶ 1917; *id.* 438, FOF ¶ 1919; *id.* 438, FOF ¶ 1920; *id.* 438-39, FOF ¶ 1922.[7]

At the root of this reasoning is something much more insidious. Throughout the course of this case, Respondents have asked the Court to accept the premise that students with higher needs—students living in poverty, English language learners, other historically disadvantaged students—are so inherently different that the Education Clause does not require the Commonwealth to provide an education

[7] Moreover, although it is undisputed that one must actually examine children's levels of need in a district to determine whether students are being provided with a meaningful opportunity to succeed, *see, e.g.*, Op. 633, it is also true that even setting aside need, children in low-wealth school districts generally attend schools with far fewer resources than their counterparts in high-wealth districts. *See, e.g.*, *id.*, FOF ¶ 1891 ("Even when student need is not considered . . . the wealthiest districts ($21,803) had approximately $4,850 more in per-student funding than the poorest districts ($16,955)").

system that gives them a meaningful opportunity to learn.[8] In its Opinion, the Court rightly rejected this premise, as the record shows the opposite—there are educational resources that can be put in service to address a wide range of student needs, and when money is directed towards those resources, educational outcomes improve. *See supra* Section IV.B.2-6.

ii. Petitioners were not required to demonstrate Respondents acted with discriminatory intent.

Leader Cutler also accuses the Court of "inferring disparate treatment" based on "achievement gaps" and claims that Petitioners were required to demonstrate intentional discrimination to establish their equal protection claim. Cutler Br. 15. This argument, too, is impermissibly asserted for the first time in support of Leader Cutler's Rule 227.1 motion, and misstates both the Court's Opinion and the applicable legal framework.

As an initial matter, it is not accurate to claim that the Court "base[d] a finding of inadequacy on achievement differences." Cutler Br. 15. As already discussed, the Court looked at a broad range of evidence to conclude that the school funding system subjects students in low-wealth districts to disparate

[8] Another example is found in Senator Ward's attempt to argue that the school funding system is functioning adequately so long as student subgroups are meeting certain remedial goals that are lower for students of color and economically disadvantaged students, Ward Br. 13-14, despite the fact that those remedial goals are themselves "a recognition of the depth of existing inequities within Pennsylvania's school funding system itself." Op. 578, FOF ¶ 2230. In other words, Legislative Respondents seek to use "historic inequities," *id.*, to justify future ones.

treatment. *See supra* Section IV.B.2-6. It was proper to consider outcomes as one of those data points.

Moreover, Leader Cutler's assertion that the Court should not have granted Petitioners' equal protection claim "absent a showing of intentional discrimination" is wrong as a matter of law. Cutler Br. 16. As this Court properly held, when an equal protection claim is based on the infringement of an independent right, courts evaluate whether the right at issue is important or fundamental, and whether that right has been burdened. Op. 740-43. Once the court finds an infringement of a right, the burden automatically shifts to respondents to justify it; there is no additional requirement that the infringement be intentional. *See id.*; *see, e.g.*, *Lyles v. City of Philadelphia*, 490 A.2d 936, 940-41 (Pa. Commw. Ct. 1985) ("The highest level, known as strict scrutiny, applies to legislative classifications infringing upon fundamental rights"); *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 670 (1966) ("where fundamental rights and liberties are asserted under the Equal Protection Clause, classifications which might invade or restrain them must be closely scrutinized and carefully confined"); *accord Plyler v. Doe*, 457 U.S. 202, 216-17 (1982) (noting that classifications that impinge upon the exercise of a fundamental right are "presumptively invidious").

Consistent with these foundational principles, Pennsylvania courts do not require a showing of discriminatory intent when considering equal protection

challenges based on the infringement of a fundamental right. *See, e.g.*, *Schmehl v. Wegelin*, 927 A.2d 183, 188 (Pa. 2007) (applying strict scrutiny to equal protection claim that visitation statute infringed on fundamental right of parents to make child-rearing decisions, without considering intent); *In re S.A.*, 925 A.2d 838, 846-47 (Pa. Super. Ct. 2007) (applying strict scrutiny to an equal protection challenge of a statute that infringed on petitioner's fundamental right to physical freedom, without considering intent); *accord Zablocki v. Redhail*, 434 U.S. 374, 388 (1978) (applying strict scrutiny and finding equal protection violation of fundamental right without intent).[9]

None of the cases cited by Leader Cutler stand for the propositions for which they are cited. Cutler Br. 15-16. In each case, the court's equal protection analysis was premised on plaintiffs' membership in a class, and thus required plaintiffs to establish that that classification had a discriminatory purpose. *See Washington v. Davis*, 426 U.S. 229 (1976) (declining to find race discrimination where plaintiffs demonstrated only disparate racial impact); *Doe ex rel. Doe v. Lower Merion Sch.*

[9] Similarly, Pennsylvania courts do not consider intent when an equal protection challenge is based on the infringement of an important right triggering intermediate scrutiny. *See, e.g.*, *James,* 477 A.2d at 1305-06 (analyzing equal protection claim that statutory limitation on right to file suit burdened petitioners' constitutional right to access the courts, without considering intent); *Smith v. City of Philadelphia*, 516 A.2d 306, 311 (Pa. 1986) (examining whether Political Subdivision Tort Claims Act violated the equal protection rights of litigants by infringing upon their constitutional right to a remedy, without considering intent); *Zauflik v. Pennsbury Sch. Dist.*, 104 A.3d 1096, 1118 (Pa. 2014) (similar).

Dist., 665 F.3d 524 (3d Cir. 2011) (same); *Applewhite*, 2014 WL 184988, at *25 (denying class-membership-based equal protection claim on the basis that "[p]etitioners did not submit any evidence that all the individuals lacking compliant ID belong to specially protected classes, or are singled out as subjects of discrimination other than for lacking ID.").[10] By contrast, to trigger strict scrutiny here, Petitioners are only required to establish that a classification has "infringed upon a fundamental right." *Lyles*, 490 A.2d at 940-41; *Harper*, 383 U.S. at 670.

3. The Court correctly ruled that the school funding system also fails rational basis review.

Although the Court properly concluded that Petitioners' claim implicated a fundamental right and therefore required strict judicial scrutiny, Op. 765, the Court also considered Legislative Respondents' argument that the system satisfied rational basis review, and concluded that local control did not provide a legitimate basis for upholding the current school funding system. *Id*. 769-73.

[10] Leader Cutler asserts that the equal protection claims in these cases all "triggered strict scrutiny" but "nevertheless" failed "absent a showing of intentional discrimination." Cutler Br. 16. This gets it backwards: in each case, the court *declined* to apply strict scrutiny because plaintiffs could not demonstrate that their membership in a class was a substantial factor in their disparate treatment. *See Washington*, 426 U.S. at 242 ("[d]isproportionate impact . . . [s]tanding alone . . . does not trigger the rule . . . that racial classifications are to be subjected to the strictest scrutiny.") (citation omitted); *Doe*, 665 F.3d 524, 556 (3d Cir. 2011) ("Because Plan 3R is absent a racially discriminatory purpose, explicit or inferable . . . it is subject only to rational basis review.") (internal citations, quotation marks and brackets omitted); *Applewhite*, 2014 WL 184988 at *26 (concluding that "the distinction between voters who lack compliant photo ID and those who have it commands only rational basis review, and does not violate equal protection").

Leader Cutler claims that this conclusion was "based on sparse legal analysis and . . . is clearly erroneous" because it "fail[ed] to apply the appropriate, deferential standard to the legislature's actions or to consider the ample support in the record, and in the Opinion, that Pennsylvania school districts can and do make meaningful spending choices under the current funding system." Cutler Br. 17-18; *accord* Ward Br. 18 n.4 ("the Court did not acknowledge the spending choices that school districts have made"). These objections are inapt.

In its Opinion, the Court explained at length why the evidence demonstrated that underfunded districts lack meaningful local control, and why "even accepting local control as a legitimate state interest, the Court could not conclude the classification drawn is reasonably related to accomplishing that interest" as required to pass rational basis review. Op. 773 n.125. The Court did not "ignore" the fact that school districts literally make their own spending choices; it simply recognized that these decisions amount to nothing more than a "Hobson's choice" when a district is underfunded. *Id*. 772. As the Court noted, "[w]hile the Commonwealth does not necessarily dictate how local districts meet the academic standards and certain powers are reserved for local school boards, (FOF ¶¶ 72, 151-152), this reservation of power is meaningless if the local districts do not have financial resources to fund such initiatives." *Id.* The record is replete with evidence supporting the Court's conclusion: by Leader Cutler's own admission, "[a] number

of low-wealth school districts don't have meaningful control over the total amount of funding they can raise," with "many low-wealth school districts" lacking "the capacity to raise substantially more money locally even if those school districts believe additional funding was necessary to improve the education they provide their students." Pet'r FOF ¶¶ 388-389; 606; *see also, e.g.*, Op. 247, FOF ¶ 1049 ("Shenandoah Valley cannot tax its way to sufficient funding."); *id.*, FOF ¶ 479 ("Greater Johnstown's efforts to raise funds had the opposite effect, and from 2017-18 to 2018-19 and from 2018-19 to 2019-20, local tax revenue decreased."); *id.*, FOF ¶ 1505 ("SDP's school board has no taxing authority."); *id.*, FOF ¶ 1885 ("Dr. Kelly credibly testified that when measured by equalized mills, low-wealth Pennsylvania districts have substantially higher tax rates than high-wealth Pennsylvania school districts even though the poorest Pennsylvania school districts also have the greatest percentage of high-need students."); *id.*, FOF ¶ 2096 ("Mr. Willis conceded that, overall, Petitioner Districts have below average household incomes, are in high poverty communities, serve a higher-needs population than the state on average, and make higher than typical tax effort.").

Respondents' claim that the Court failed to apply the deference required under rational basis is also erroneous: to the contrary, the Court emphasized that "[t]he Court does not question the importance of local control." Op. 772. But the Court rightly observed that there was no rational connection between a system that

is over-reliant on local tax revenue and one that promotes local control, repeatedly noting that "Legislative Respondents have not identified how local control would be undermined by a more equitable funding system," and that "[p]roviding equitable resources would not have to detract from local control, particularly for the districts which can afford to generate the resources they need; local control could be promoted by providing low-wealth districts with real choice, instead of choices dictated by their lack of needed funds." *Id*. 771-72; *accord William Penn II*, 170 A.3d at 442, n.40 (rejecting the local control argument as "tendentious" and "conclusory in its presentation," and emphasizing that school funding disparities harm local control). The Court buttressed its legal analysis with examples of other cases in which courts have rejected local control as a justification and ruled that a school funding scheme "could not satisfy even the lowest standard, rational basis." Op. 770-71 (discussing *Dupree*, *McWherter, Bismark*).

Leader Cutler insists that even if the Court does not accept local control as a legitimate rationale for the funding system, it should have upheld the system nevertheless if "some rationale may conceivably be the purpose." Cutler Br. 20. But if Legislative Respondents cannot, after almost a decade of litigation, identify any other "conceivable rationale" for its underfunded and discriminatory system, it is because no such rationale even conceivably exists.

V. CONCLUSION

Legislative Respondents have failed to identify any basis for post-trial relief. Their motion should be denied, and the Court's Order of February 7, 2023 should be entered as a final judgment.

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CERTIFICATION OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the United Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

I further certify that this brief is 13,957 words, and therefore complies with Pa.R.A.P. 2135.

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