

- I. The Pennsylvania Constitution requires the General Assembly to provide all children with a comprehensive, contemporary, effective public education.....1**
 - A. The standard: “A comprehensive, effective, and contemporary system of public education” for all.....1**
 - B. There are “essential elements” of a contemporary, effective system that all children must have.1**
 - C. A thorough and efficient system requires measuring whether the system is providing sufficient resources for all children and then curing any inadequacies3**
 - D. A thorough and efficient system must decouple local wealth and adequate funding.3**
- II. Pennsylvania’s system of school funding is unreasonable, irrational, and inequitable.4**
 - A. Pennsylvania’s educational system is overly reliant on local taxpayers. 4**
 - B. Low-wealth districts need the most, try the hardest, and have the least.....5**
 - C. All children can learn. Some children require more resources in order to learn.6**
 - D. Increased funding improves student outcomes.6**
- III. Petitioners and low-wealth districts have insufficient educational resources to provide a thorough and efficient education to their students.8**
 - A. Low-wealth districts lack sufficient funding.8**
 - B. Low-wealth districts lack sufficient courses, curricula, and other programs that “help students become college and career ready.”9**
 - C. Low-wealth districts lack sufficient staff.10**

- D. Low wealth districts lack sufficient, adequate facilities.11**
- E. Low-wealth districts lack sufficient instrumentalities of learning, from technology to books12**
- IV. The school funding system is causing failure.....13**
 - A. As a result of inadequate levels of funding, student outcomes in Pennsylvania are unacceptable across every measure.....13**
 - B. As a result of underfunding, economically disadvantaged, students of color, and other historically marginalized children are being left behind.....14**
- V. The Commonwealth is responsible for solving this failure.16**
 - A. The Legislative and Executive Branches must solve this problem. 16**
 - B. Local control is an illusion when you have insufficient funding. 16**
- VI. The opinion busted Pennsylvania school funding myths.17**
 - A. The pandemic shed greater light on historic disparities in school funding, but one-time federal aid did not fix them.17**
 - B. The hold harmless debate is a symptom of an inadequately funded system.19**
 - C. Charter schools fare no better in the system, and result in “stranded costs” that must be taken into account.19**
 - D. A “silent recession:” State funding increases have failed to keep up with inflation and increases in mandated costs.20**
 - E. Fund balances are imperative for sound fiscal management and not the cause of inadequate resources.20**
 - F. National comparisons and national figures on PA spending are not accurate.....21**

I. The Pennsylvania Constitution requires the General Assembly to provide all children with a comprehensive, contemporary, effective public education.

A. The standard: “A comprehensive, effective, and contemporary system of public education” for all.

- “[I]t is clear from the history of the Education Clause that the system of public education was intended to reach as many children as possible. Moreover, it is equally apparent that children must be provided a meaningful opportunity to succeed...The Court concludes that the appropriate measure is whether **every** student is receiving 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.” Op. at 634.
- “The Education Clause, article III, section 14 of the Pennsylvania Constitution, requires that every student receive 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.” Order ¶ 1.
- “[T]he Court finds it unnecessary to define the constitutional standard beyond that it requires that every student receive a meaningful opportunity to succeed academically, socially, and civically, by receiving a comprehensive, effective, and contemporary education. As discussed more fully below, it is apparent to the Court, based upon the credited testimony and evidence, that every student is not receiving that opportunity.” Op. at 676; *see also* Op. at 646, 709; 729; 773-74; 775; 776-77 (repeating standard).

B. There are “essential elements” of a contemporary, effective system that all children must have.

- There “are essential elements of a thorough and efficient system of public education[:]
– adequate funding; courses, curricula, and other programs that prepare students to be college and career ready; sufficient, qualified, and effective staff; safe and adequate facilities; and modern, quality instrumentalities of learning.” Op. at 705
- “As the parties agree that the Court must examine the inputs into the system of public education in order to evaluate its constitutionality, the Court begins with those. The most obvious input is funding, and the resources provided to students are also inputs, such as courses and curricula, staff, facilities, and instrumentalities of learning.” Op. at 676.

Basic Education Funding Commission

Appendix of Selected Passages from Commonwealth Court's Opinion

- “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.
Those strategies include:
 - a. high quality pre-K;
 - b. a sufficient number of effective teachers to meet student needs and a stable teaching force;
 - c. early intensive resources provided from kindergarten to 3rd grade that focus on the concepts of literacy, mathematics, and numeracy;
 - d. professionals in math and reading to provide remediation, including reading specialists, and Multi-tiered Systems of Support (MTSS) that work to identify those students who are in need of additional interventions and provide those interventions;
 - e. personalized learning experiences that encourage school systems to focus on individual needs;
 - f. Positive Behavior Interventions and Support (PBIS) and similar programs to address emotional needs;
 - g. a sufficient number of school counselors;
 - h. school libraries and school librarians;
 - i. Advanced Placement (AP), International Baccalaureate (IB), and college-level courses;
 - j. programs to increase school attendance;
 - k. after-school programs;
 - l. access to art and music; and
 - m. extracurricular activities to develop leadership skills, collaboration skills, persistence skills, and resiliency.” Op. at 64-65, FOF ¶ 249.

- 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. Op. at 633, citing FOF ¶¶ 314-15; *see also* Op. at 102-04, FOF ¶¶ 401, 404, 406, 407 (importance of high quality early education); *id.* 35, FOF ¶¶ 136-39; *id.* 37, FOF ¶¶ 145-251; *id.* 69, FOF ¶¶ 266-289; *id.* 81, FOF ¶ 314; *id.* 104, FOF ¶¶ 408-430; *id.* 166, FOF ¶ 681; *id.* 389, FOF ¶ 1727; *id.* 456, FOF ¶¶ 1971-1980; *id.* 487, FOF ¶ 2040; *id.* 488, FOF ¶ 2042; *id.* 534, FOF ¶ 2142-48; *id.* 538, FOF ¶ 2154; *id.* 540, FOF ¶ 2157.

C. A thorough and efficient system requires measuring whether the system is providing sufficient resources for all children and then curing any inadequacies.

- “Whether the system of public education is ‘thorough and efficient’ and ‘serv[ing] the needs of the Commonwealth,’ PA. CONST. art. III, § 14, necessarily requires an examination, not just of the inputs, but also the outcomes. 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. at 707.
- “[S]ome level of qualitative assessment is necessary to determine whether the State is meeting its obligation to provide an adequate education. This assessment is an intrinsic part of our power to interpret the meaning of the constitution’s language. . . . The very act of defining the terms used in the Education Clause and determining whether the constitutional requirements have been met inevitably requires a measure of qualitative assessment.” Op. at 675 (quoting *Cruz-Guzman v. State of Minnesota*, 916 N.W.2d 1 (Minn. 2018)).
- “[A]ny plan devised by Respondents at the Court’s direction will have to provide all students in every district throughout Pennsylvania, not just Petitioners, with an adequately funded education, i.e., a ‘thorough and efficient’ one.” Op. at 608.

D. A thorough and efficient system must decouple local wealth and adequate funding.

- Crediting testimony from Mr. Willis acknowledging, “that the touchstone principle in the evaluation of a school funding system is ‘that there should be little to no relationship between local wealth . . . and the amount of resources available to a local school district.’” Op. at 510, ¶ 2095.
- “Applying strict scrutiny, the Court concludes Petitioners have established an equal protection violation. No compelling government purpose has been espoused for the disparities identified between low-wealth and high-wealth school districts. Even applying the less stringent intermediate or rational basis scrutiny, the Court would conclude that there is no rational basis for such disparities.” Op. at 775.
- “The evidence demonstrates that low-wealth districts like Petitioner Districts, which struggle to raise enough revenue through local taxes to cover the greater needs of their students, lack the inputs that are essential elements of a thorough and efficient system

Basic Education Funding Commission

Appendix of Selected Passages from Commonwealth Court’s Opinion

of public education – adequate funding; courses, curricula, and other programs that prepare students to be college and career ready; sufficient, qualified, and effective staff; safe and adequate facilities; and modern, quality instrumentalities of learning.” Op. at 705.

- “Based upon the evidence presented, it is evident to the Court that the current system of funding public education has disproportionately, negatively impacted students who attend schools in low-wealth school districts. This disparity is the result of a funding system that is heavily dependent on local tax revenue, which benefits students in high-wealth districts. It is also impacted by a funding formula that does not adequately take into account student needs, which are generally higher in low-wealth districts. As a result, students in low-wealth districts do not have access to the educational resources needed to prepare them to succeed academically, socially, or civically.” Op. at 769.

II. Pennsylvania’s system of school funding is unreasonable, irrational, and inequitable.

A. Pennsylvania’s educational system is overly reliant on local taxpayers.

- “Dr. Kelly found a substantial variation in both components of the Aid Ratio: property wealth and income wealth Examining Petitioner Shenandoah Valley and the New Hope-Solebury School District, a high-wealth school district, Dr. Kelly showed that if both districts taxed their residents at 19.1 equalized mills (the state mean for 2018-19), Shenandoah would generate \$3,396 per Weighted Average Daily Membership (WADM), while New Hope-Solebury would generate 6 times more, at \$20,851 per WADM. Dr. Kelly testified that the disparity in wealth between the districts is so great that even if Shenandoah Valley taxed its residents at the highest millage rate in the state, and New Hope-Solebury taxed itself at the lowest, New Hope-Solebury would still generate about three times more revenue per WADM.” Op. at 421-23, FOF ¶¶ 1883-84.
- “[T]he fact remains that public schools are heavily reliant on local funding. While approximately one-third of school funding revenue comes from the state, more than half generally comes from local sources, primarily in the form of local property taxes. As a result of this heavy reliance on local funding, low-wealth districts are negatively impacted. As Dr. Kelly illustrated, districts with the same equalized millage rate can generate significantly different amounts based on property wealth and income wealth. While a solution may seem evident – raise taxes to generate more revenue – as witnesses for the individual Petitioner Districts, all of which would be considered low wealth, credibly testified, they already tax at higher rates than the wealthier districts,

Basic Education Funding Commission

Appendix of Selected Passages from Commonwealth Court’s Opinion

and increasing taxes has, on occasion, decreased revenue. Moreover, the tax increases do not keep pace with rising costs.” Op. at 677; *see also* Op. at 97, FOF ¶ 379; *id.* 121, FOF ¶ 479; *id.* 421-22, FOF ¶¶ 1883-1884.

- “Low-wealth districts across the state are forced to make these difficult decisions because, although the Education Clause imposes a duty on the General Assembly to maintain and support a thorough and efficient system of public education, PA. CONST. art. III, § 14, as discussed, the system is heavily dependent on local tax revenue, which the lower wealth districts cannot generate like their more affluent counterparts.” Op. at 697-98.

B. Low-wealth districts need the most, try the hardest, and have the least.

- “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.” Op. at 423, FOF ¶ 1885.
- “Dr. Kelly credibly testified 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.” Op. at 423-24, FOF ¶ 1887.
- “Dr. Kelly explained that according to the need metrics embedded in the Fair Funding Formula, the student body of the poorest quintile of Pennsylvania districts has a need for 38% additional funding, while the student body of the wealthiest quintile of districts has a need for only 11% additional funding. Dr. Kelly stated this pattern is consistent across wealth quintiles.” Op. at 429, FOF ¶ 1889.
- “Low-wealth districts have more students with higher needs, Op. at 423, ¶ 1886; and less funding, *id.* 423-24, FOF ¶ 1887; *id.* 425, FOF ¶ 1891; *id.* 706.
- “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.” Op. at 510, ¶ 2096.

C. All children can learn. Some children require more resources in order to learn.

- Former Deputy Secretary Stem testified that “[t]he Department’s position is 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.” Op. at 65, FOF ¶ 251.
- “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.” Op. at 540, FOF ¶ 2157.
- “In short, these statistics confirm what numerous witnesses testified as to: every child can learn, regardless of individual circumstances, with the right resources, albeit sometimes in different ways.” Op. at 717-18.
- “[T]he General Assembly has recognized these differing needs, and the necessity of additional funding, through its provision of such additional funding to those students and school districts that educate students who require additional services. This recognition culminated in the Fair Funding Formula, which distributes funds, at least in part, on a weighted basis, taking into consideration certain needs-based factors, such as poverty, ELL students, charter school attendance, and sparsity....” Op. at 633-34.
- *See also* Op. at 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.* 448-49, FOF ¶ 1953 (“Dr. Barnett testified there is nothing immutable “about a child being born into poverty that condemns that child to low achievement.” He opined that “it’s much easier to prevent and more cost-effective to prevent the children from falling far behind than it is to remediate the problem later.”).

D. Increased funding improves student outcomes.

- “From these statistics, the Court concludes that money does matter, and economically-disadvantaged students and historically underperforming students can overcome challenges if they have access to the right resources that wealthier districts

Basic Education Funding Commission

Appendix of Selected Passages from Commonwealth Court's Opinion

are financially able to provide. This is consistent with Dr. Noguera's credible testimony that additional school resources can dramatically reduce disparities that exist between low-income children and their more affluent peers, as well as Dr. Johnson's credible testimony that sustained increases in funding can help eliminate achievement gaps between economically-disadvantaged students and their non-economically-disadvantaged peers. In short, these statistics confirm what numerous witnesses testified as to: every child can learn, regardless of individual circumstances, with the right resources, albeit sometimes in different ways." Op. at 717-18, *see also* Op. at 28, FOF ¶103; *id.* 38, FOF ¶ 151; *id.* 310, FOF 1329, *id.* 448, FOF ¶ 1953; *id.* 457, FOF ¶ 1973; *id.* 485, FOF ¶ 2035; *id.* 486, FOF ¶ 2037.

- "The most obvious input is funding, and the resources provided to students are also inputs, such as courses and curricula, staff, facilities, and instrumentalities of learning. These resources inevitably are tied to funding to some degree, so the Court begins there." Op. at 676.
- "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) Op. at 534-37, FOF ¶¶ 2141-48; *see also* Op. at 540, FOF ¶ 2157.
- "The wealthier the quintile, the more likely economically-disadvantaged students are to graduate from college. These findings are not limited to the subset of economically-disadvantaged students, but also hold true for other historically underperforming student subgroups, which include ELL students and students with disabilities. For example, historically underperforming students in high-wealth districts outperform their peers in low-wealth districts, 45.1% to 25.2%." Op. at 717; *see also* Op. at 438, FOF ¶¶ 1920, 1922; *id.* 581-584, FOF ¶¶ 2238-2240; *id.* 588, FOF ¶ 2047; *id.* 601-602, FOF ¶¶ 2278-2279.
- "[E]conomically-disadvantaged students who attend a wealthier district outperform their peers in less wealthy districts by 16 to 20 percentage points. Dr. Kelly's analysis, which the Court credits, showed that 62% of economically-disadvantaged students meet state ELA/literature standards in the wealthiest quintile compared to only 42.6% in the poorest, 43.1% meet math/algebra standards in the wealthiest quintile compared to only 24.5% in the poorest, and 67.2% meet science/biology standards in the wealthiest compared to only 51% in the poorest. Performance improves across each of the quintiles. The wealthier the quintile, the more likely economically-disadvantaged students are to graduate from college. These findings are not limited to the subset of economically-disadvantaged students, but also hold true for other historically

underperforming student subgroups, which include ELL students and students with disabilities. For example, historically underperforming students in high-wealth districts outperform their peers in low-wealth districts, 45.1% to 25.2%.” Op. at 716-717.

- “Dr. Kelly testified economically-disadvantaged students that graduate from a wealthier quintile district go on to graduate from college within six years at higher rates than economically-disadvantaged students attending a district in the poorest quintile, as the below chart illustrates.” Op. at 602, FOF ¶ 2279; *see also* Op. at 437, FOF ¶ 1917, *id.* 581-584, FOF ¶¶ 2238-2240; *id.* 585, FOF ¶¶ 2242-43; FOF ¶¶ 2278-2279.

III. Petitioners and low-wealth districts have insufficient educational resources to provide a thorough and efficient education to their students.

A. Low-wealth districts lack sufficient funding.

- “The Costing Out Study, and the subsequent calculation of adequacy shortfalls, even if for only three years, does demonstrate a legislative recognition that there was a funding inadequacy. . . . The Court finds 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. at 678.
- “Low-wealth districts cannot generate enough revenue to meet the needs of their students, and the pot of money on which Legislative Respondents allege they sit is not truly disposable income.” Op. at 681.
- “Based upon the evidence presented, it is evident to the Court that the current system of funding public education has disproportionately, negatively impacted students who attend schools in low-wealth school districts. This disparity is the result of a funding system that is heavily dependent on local tax revenue, which benefits students in high-wealth districts. It is also impacted by a funding formula that does not adequately take into account student needs, which are generally higher in low-wealth districts. As a result, students in low-wealth districts do not have access to the educational resources needed to prepare them to succeed academically, socially, or civically.” Op. at 769.

Basic Education Funding Commission

Appendix of Selected Passages from Commonwealth Court's Opinion

- “The evidence demonstrates that low-wealth districts like Petitioner Districts, which struggle to raise enough revenue through local taxes to cover the greater needs of their students, lack the inputs that are essential elements of a thorough and efficient system of public education – adequate funding; courses, curricula, and other programs that prepare students to be college and career ready; sufficient, qualified, and effective staff; safe and adequate facilities; and modern, quality instrumentalities of learning.” Op. at 705.
- “Educators credibly testified to lacking the very resources state officials have identified as essential to student achievement, some of which are as basic as safe and temperate facilities in which children can learn. Educators also testified about 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. The effect of this lack of resources shows in the evidence of outcomes, which also must be considered to determine if the system is “thorough and efficient” and to give effect to the phrase “to serve the needs of the Commonwealth.” Op. at 774.

B. Low-wealth districts lack sufficient courses, curricula, and other programs that “help students become college and career ready.”

- “Thorough and efficient” programming entails, according to the state’s own education officials includes, but is not limited to:
 - curricula that “align[s] with state standards,” Op. at 683;
 - AP, IB, or college-level courses that “help students become college and career ready,” Op. at 683;
 - art and music, and other extracurricular activities and sports that “help students develop leadership, collaboration, and persistence skills,” Op. at 682;
 - “early intensive resources for kindergarten to third grade focusing on literacy, mathematics, and numeracy, remediation in math and reading and other intervention services,” including small group instruction, tutoring, and social and emotional learning, Op. at 685; and
 - high quality early childhood education and pre-K, which state education officials testified was “particularly important for children living in poverty,” Op. at 688.
- “Low-wealth districts, such as Petitioner Districts, often lack the staff to implement such programs. When they do have such staff, it is not enough to meet the needs of their students.” Op. at 685-86.

Basic Education Funding Commission

Appendix of Selected Passages from Commonwealth Court’s Opinion

- “[S]ome districts’ curricula does not align with state standards, despite Board regulations requiring same, because they lack the resources – money, personnel, and time – to revise them. Petitioner Districts largely lack dedicated curriculum writers and instead pay their teachers to help write the curriculum.” Op. at 683.
- “Dr. Costello of Wilkes-Barre stated that many students cannot take AP classes that may be offered ‘because of their track. . . . [F]rom elementary school on, there was an achievement gap and we didn’t have the necessary resources to get those individuals or those children up to speed so that they were able to be set up in a situation where they would be able to succeed in a math sequence that would allow for them to enter AP courses. ‘Dr. Rau of Lancaster, Dr. Hite of SDP, and Ms. Harbert of William Penn echoed this sentiment.’” Op. at 684.
- “The availability of tutoring and afterschool programs also does not meet the demand.” Op. at 685.
- “Although more than 29,000 children participated in the state-run Pre-K Counts program as of December 2021, the Department estimates it only serves approximately 40% of the students who would be eligible.” Op. at 688-89.
- “The above is just a small sampling of how courses, curricula, and programs are lacking.” Op. at 690.

C. Low-wealth districts lack sufficient staff.

- “Another component of a thorough and efficient system of public education about which there appears to be no dispute involves teachers, specifically sufficient, well-trained, and experienced ones. . . . In many of the Petitioner Districts, teachers have to teach multiple classes of different subjects simultaneously. For example, at Shenandoah Valley, there were more than 10 teachers conducting multiple classes of different subjects to different students at the same time. It is beyond cavil to say that this is not effective learning.” Op. at 690.
- “Petitioners presented credible evidence that smaller class sizes can improve student achievement. The Department even provides Ready-to-Learn Block Grants to promote, among other strategies, smaller class sizes. Numerous expert witnesses also testified as to its importance.” Op. at 694.

Basic Education Funding Commission

Appendix of Selected Passages from Commonwealth Court's Opinion

- “The Court heard extensive credible testimony from educational professionals and experts as to how other professional staff, such as administrators, guidance counselors, social workers, nurses, psychologists, and other support staff, including instructional aides, interventionists, reading specialists, and tutors help students succeed. As an example, former Deputy Secretary Stem testified that reading and math specialists improve student achievement and educational outcomes. In addition, there was evidence that low-income students often require more support, so an adequate number of counselors is needed to meet those needs. In its ESSA Plan, the Department identified the importance of employing a sufficient number of effective teachers to meet student needs, and also professionals in math and reading to provide remediation services and other types of intervention, and school librarians, as a few of the strategies that could improve student outcomes.” Op. at 694.
- “While it is true that there was testimony that several of the districts have some of these personnel, there was also testimony that it was the bare minimum required by law, of an insufficient quantity to actually meet student needs, or was funded through outside sources or one-time ESSER funds, which districts have been cautioned against using for such purposes.” Op. at 695.

D. Low-wealth districts lack sufficient, adequate facilities.

- “Another component of a thorough and efficient system of public education that is generally not in dispute is the need for facilities. 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. The Department and State Board have identified adequate facilities as being conducive to learning. Dr. Noguera also testified that quality and cleanliness of facilities are important for academic achievement. Yet, credible testimony was presented to the Court 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.” Op. at 698.
- “In addition, the Court has concerns whether all the facilities are, in fact, safe.” Op. at 701.
- “Former Deputy Secretary Stem testified there are districts in Pennsylvania, especially lower-wealth districts, that face serious safety concerns related to exposed asbestos and lead in school buildings. Moreover, former Deputy Secretary Stem has

pointed out that “existing funding sources are not sufficient to remediate those types of issues.” Op. at 110, FOF ¶ 432.

- “Former Deputy Secretary Stem identified poor air quality and ventilation and inadequate classroom space as other facility problems that impact student learning. Former Secretary Ortega testified that the inadequate conditions in these school buildings are “connected to inequities that exist because of the way the funds are made available to our schools.” Op. at 110, FOF ¶ 433.

E. Low-wealth districts lack sufficient instrumentalities of learning, from technology to books

- “[I]nstrumentalities of learning are an essential element of a quality public education in the Commonwealth, though they are not as rudimentary as Legislative Respondents suggest. In the 21st century, students need more than a desk, chair, pen, paper, and textbooks, (some of which are outdated in Petitioner Districts) for such items do not constitute a thorough and efficient system of public education under any measure. Education must evolve if students are to be provided a meaningful opportunity to succeed academically, socially, and civically. That is the only way students will meet the ever-changing needs of the modern-day workforce and become productive members of society, as our forebearers had envisioned.” Op. at 702-03.
- “Many districts that were not one-to-one with laptops or tablets before the pandemic, like Greater Johnstown, are presently, due to ESSER funds, but now districts are faced with other challenges. Dr. Arcurio testified to being “ke[pt] up at night” because she does not know what Greater Johnstown will do once ESSER funds expire, as it does not have the money to otherwise maintain or replace the Chromebooks.” Op. at 703-04.
- “Moreover, there was evidence that even one of the most basic instrumentalities of learning – textbooks – are not up to par. Multiple Petitioner Districts testified to possessing classroom sets of textbooks that multiple classes share, meaning students who may need to take a textbook home cannot do so. Another consequence of not having enough textbooks for each student to have his or her own is that teachers expend additional time and money, sometimes their own money, obtaining other resources to supplement their lessons.” Op. at 704-05.

IV. The school funding system is causing failure.

A. As a result of inadequate levels of funding, student outcomes in Pennsylvania are unacceptable across every measure.

- “Whether the system of public education is ‘thorough and efficient’ and ‘serv[ing] the needs of the Commonwealth,’ PA. CONST. art. III, § 14, necessarily requires an examination, not just of the inputs, but also the outcomes. 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. at 707.
- “There are outcomes that assist the Court in determining whether every student is receiving a meaningful opportunity to succeed academically, socially, and civically, which require that all students have access to a comprehensive, effective, and contemporary system of public education. These include the statewide assessments, the PSSAs and Keystone Exams; PVAAS, which measures growth; national measures, such as NAEP; high school graduation rates; and postsecondary attainment rates, among others.” Op. at 709.
- “A review of the results of the PSSAs and Keystone Exams shows that, across the state, students are not reaching ‘proficiency,’ defined as ‘satisfactory academic performance,’ which ‘demonstrates an adequate command of and ability to apply the knowledge, skills, and practices represented in the Pennsylvania standards.’ From 2015-19, nearly 325,000 students of the approximate 870,000 students taking the PSSAs and Keystone Exams each year were not proficient or advanced in ELA/literature. Almost half a million students did not meet proficiency or higher on the math/algebra PSSAs and Keystone Exams for each of the same five years.” Op. at 712.
- “Obviously, when considering whether the system of public education is preparing students to be college and career ready, it is necessary to examine postsecondary enrollment and attainment rates. . . . Increased attainment, according to Dr. Belfield, results in human capital and ‘the more human capital a worker has, the more productive that worker can be,’ thereby increasing economic growth. There are also ‘spill-over productivity gains’ and ‘social health gains,’ among other benefits. Legislative Respondents’ expert, Mr. Willis, acknowledged research that would support these findings. The State Board has also recognized the importance of postsecondary attainment, setting a goal that 60% of Pennsylvanians aged 25-65 attain a postsecondary degree or industry credential by 2025. In 2021, the rate was approximately 50%.” Op. at 726.

Basic Education Funding Commission

Appendix of Selected Passages from Commonwealth Court's Opinion

- “[T]here are other measures that are indicative of whether the system is thorough and efficient. For instance, on the SAT exams, none of Petitioner Districts has an average score of 1,000.” Op. at 728.
- “Petitioners presented extensive credited evidence demonstrating wide achievement gaps on the state assessments between students who attend schools in a low-wealth district and their peers who attend schools in a more affluent district.” Op. at 774.
- “The results in Petitioner Districts and other low-wealth districts students are scoring proficient at even lower rates, illustrating significant achievement gaps between students who attend those districts and students who attend a more affluent district, as well as achievement gaps between other student subgroups. As Dr. Kelly credibly testified, students who attend one of the districts in the poorest quintile test significantly lower on state assessments than those who attend richer districts that can afford more educational resources. The gap between students in the lowest wealth districts and highest wealth districts scoring proficient or advanced is 24.5 percentage points in science and biology (56.5% versus 81.0%), 28 percentage points in ELA/literature (49.4% versus 77.4%), and 30.8 percentage points on math and algebra (31.2% versus 62.0%). There are also large gaps between the second poorest quintile and the wealthiest district. Dr. Johnson similarly opined that there is a gap between the most affluent and least affluent districts, with students in the most affluent performing two to three grade levels above those in the least affluent.” Op. at 713, *see also* Op. at 570, FOF ¶ 2217; *id.* 489, FOF ¶ 2048; *id.* 571, FOF ¶ 2218.

B. As a result of underfunding, economically disadvantaged, students of color, and other historically marginalized children are being left behind.

- “Dr. Kelly credibly testified regarding the extent to which Black and Hispanic children are impacted by underfunding. . . . He found that across each measure of inadequacy or inequity, Black and Hispanic students were disproportionately impacted.” Op. at 435, FOF ¶¶ 1912-13.
- “No party argues that such disparities are acceptable in a modern society. For example, Speaker has declared that education is ‘the civil rights issue of our day.’ And the Department agrees that there is an urgent need to address the conditions of learning that Black and Hispanic children experience.” Op. at 414, FOF ¶ 1858.
- “Former Deputy Secretary Stem testified that NAEP achievement ‘gaps hold fairly steady over time with Pennsylvania having among the largest gaps in the nation.’” Op. at 577, FOF ¶ 2228.

Basic Education Funding Commission
Appendix of Selected Passages from Commonwealth Court’s Opinion

- “In recognition of the achievement gaps, in the state’s ESSA Plan, the Department made the decision to set separate, lower goals for traditionally underserved groups rather than setting uniform goals for all students. Therefore, even were Pennsylvania to achieve all of its goals by 2030 — which the Department admits will not happen without additional funding — significant achievement gaps will remain throughout the system. . . . Former Deputy Secretary Stem explained the ultimate decision to have different goals was not because of any belief about the innate ability of certain students, but rather a recognition of the depth of existing inequities within Pennsylvania’s school funding system itself. Former Deputy Secretary Stem testified: ‘The very starting point is a reflection of the historic inequities in our system that have created the conditions where this is where — this is where we’re starting.’” Op. at 578, FOF ¶¶ 2229-30.
- “These achievement gaps widen when student subgroups – Blacks, Hispanics, ELL students, economically-disadvantaged, and other historically underperforming students – are examined. Similar gaps were shown with regard to high school graduation rates, postsecondary enrollment and attainment, and other measures, such as rigorous courses of study.” Op. at 774; *see also* Op. at 714-715.
- “The Department also acknowledges that funding inequities are one of the “fundamental root causes” of these gaps and that increased funding is necessary to address them. These gaps demonstrate that the way the system is funded is failing its most vulnerable, traditionally underserved children: students of color, economically-disadvantaged students, and historically underperforming students, including ELL students and special education students. And as the Department recognizes, and Dr. Kelly demonstrated in his analysis, a common denominator of these disparities in student outcomes is funding inequities.” Op. at 578-79, FOF ¶ 2231.
- “Department data shows that Black, Hispanic, and economically-disadvantaged students enroll in and complete postsecondary degree within six years of high school graduation at almost half the rate of all students and their White counterparts. . . . As a result, racial and ethnic gaps between individuals who hold degrees are similarly significant, in what former Secretary Ortega termed as ‘huge difference[s].’” Op. at 600-01, FOF ¶¶ 2275-76.
- “NSC data acquired and used by the Department shows that, of 2013 high school graduates, 21.4% of economically-disadvantaged students obtained a degree within 6

years. For non-economically-disadvantaged students, that number was 52.3%.” Op. at 601, FOF ¶ 2276

- “Overall, there are consistent gaps when the inputs and outcomes described above are evaluated: gaps of achievement for economically-disadvantaged students, Black and Hispanic students and other historically underperforming students. The consistency of these gaps over the variety of inputs and outputs leads to the inescapable conclusion that these students are not receiving 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.” Op. at 729; *see also* Op. at 714; *id.* 490, FOF ¶¶ 2049-50; *id.* 579, FOF ¶¶ 2229-2230; *id.* 579-580, FOF ¶¶ 2234-35.

V. The Commonwealth is responsible for solving this failure.

A. The Legislative and Executive Branches must solve this problem.

- “Having faced the ‘formidable challenge’ given to the Court by the Supreme Court head on, this Court now tasks Respondents with the challenge of delivering a system of public education that the Pennsylvania Constitution requires – one that provides for every student to receive 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.” Post-trial Motion Opinion at 13 (June 21, 2023).
- The Court acknowledges the dueling public interests that Legislative Respondents face. However, . . . the Supreme Court has already stated that the General Assembly’s constitutional 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.” Op. at 770, n.124.

B. Local control is an illusion when you have insufficient funding.

- “In *William Penn II*, the Supreme Court stated, recitations of the need for local control cannot relieve the General Assembly of its exclusive obligation under the Education Clause.” Op. at 770.
- “What the Court’s findings illustrate is local control by the districts is largely illusory. Low-wealth districts cannot generate enough revenue to meet the needs of their students, and the pot of money on which Legislative Respondents allege they sit is not truly disposable income.” Op. at 681

Basic Education Funding Commission

Appendix of Selected Passages from Commonwealth Court’s Opinion

- “While the Commonwealth does not necessarily dictate how local districts meet the academic standards and certain powers are reserved for local school boards, this reservation of power is meaningless if the local districts do not have financial resources to fund such initiatives. The Court does not question the importance of local control; rather, it questions whether there can be meaningful local control when low-wealth districts are constantly faced with making tough decisions regarding which programs or resources to cut or which students, all in need of additional resources, receive access to the precious few resources these districts can afford to provide.” Op. at 772.
- *See also* Op. at 247, FOF ¶ 1049 (“Shenandoah Valley cannot tax its way to sufficient funding.”); *id.* 121, 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.* 348, FOF ¶ 1505 (“SDP’s school board has no taxing authority.”); *id.* 424, FOF ¶ 1889 (“Dr. Kelly credibly explained that for low-wealth districts in Pennsylvania, local fiscal control is largely an illusion because these districts generally have substantially higher tax rates than high-wealth districts”); *id.* 510, 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.”).
- “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.” Op. at 771-72.

VI. The opinion busted Pennsylvania school funding myths.

A. The pandemic shed greater light on historic disparities in school funding, but one-time federal aid did not fix them.

- “The COVID pandemic highlighted these deficiencies, which the Department recognizes. When Petitioner Districts, which were already experiencing financial difficulties, were forced to close and rely upon online learning for an extended period of time, they were unable to transition quickly and effectively due to the lack of technology that was sufficient to meet their students’ varying needs. This created both short-term and long-term problems, which illustrate the compounding nature of underfunding. For example, students in the poorer districts were those most likely to be without access to a laptop and the means to utilize it at home, including reliable

Basic Education Funding Commission

Appendix of Selected Passages from Commonwealth Court’s Opinion

Wi-Fi. Other students were thrust into online learning when neither they nor their family had familiarity with the technology they were now forced to use. The high-need students who disproportionately attend these low-wealth districts, such as ELL students, students with disabilities, and economically-disadvantaged students, lost access to important support and services, as well as valuable learning and socialization opportunities, thereby exacerbating the achievement gaps that already were evident. Aside from the immediate effect on the students who were deprived of much needed support and services, the students and districts they attend face a difficult road to recovery. As numerous superintendents testified, but for the ESSER funds, many of the programs that were saved or added, the staff that was retained or welcomed, the facilities that were repaired and developed, and technology that was provided to students or improved upon, would still be lacking, and will likely be lost when those funds run out if changes to the funding system currently in place are not made. This will create the ironic situation that just as the full effects of the loss of learning and socialization suffered by students in low-wealth districts continue to manifest the funding to hire the staff or put into place necessary programs to combat these problems will not be available.” Op. at 706-07, *see also e.g.*, Op. at 114-115, FOF ¶¶ 454, 455; *id.* 147, FOF ¶¶ 596-597; *id.* 148, FOF ¶ 599; *id.* 187-188, FOF ¶¶ 780-81; *id.* 214, FOF ¶¶ 906-07; *id.* 215-216, FOF ¶¶ 909-912; *id.* 265, FOF ¶ 1136; *id.* 295, FOF ¶1260; *id.* 340, FOF ¶¶1472-73; *id.* 364, FOF ¶¶ 1597-98, *id.* 265, FOF ¶ 1600; *id.* 275, FOF ¶ 1659; *id.* 413, FOF ¶ 1855.

- “[I]n a letter to school districts, President Pro Tempore specifically advised that “school districts should not use one-time federal funding to increase their ongoing, baseline spending with the expectation that the state’s fiscal condition will be in a position to replace the funding in future years.” Op. at 80, FOF ¶ 310.
- “As former Deputy Secretary Stem explained, former Secretary Ortega was communicating to school district leaders ‘a reminder that these are one-time funds[;] these are non-recurring funds[;] and that districts should be . . . thoughtful about how they’re leveraging these funds for short and long-term needs, knowing that in 2024, that these funds would no longer be available.’ Former Deputy Secretary Stem also explained that the intent was to warn districts that the money was not appropriate for recurring costs, such as ‘long range staffing needs,’ because ‘[t]here’s a cliff that school leaders should be anticipating.’ As he further explained, former Secretary Ortega was ‘advocating for a strategic approach to meeting students’ needs through these funds, and a thoughtful approach that considers all funding sources in well[-]conceived ways.’” Op. at 78, FOF ¶ 308.
- “Perhaps cognizant that history could repeat itself, the Department and President Pro Tempore admonished districts to avoid using ESSER funds for recurring costs.

Notwithstanding, some districts still felt they had no choice if they were to meet the immediate needs of their students, especially in the wake of the COVID pandemic.” Op. at 697, *see also* Op. at 78-80, FOF ¶¶ 308-310; Op. at 244, FOF ¶ 1035.

B. The hold harmless debate is a symptom of an inadequately funded system.

- “[T]here is nothing in Petitioners’ prayer for relief that would remove funding from any other entity. There is no threat to the due process rights of any non-party entity. As noted above, the relief requested by Petitioners is prospective only and intended to benefit all students in Pennsylvania.” Op. at 610.
- “If the hold harmless principle were no longer applied and all the money were allocated pursuant to the Fair Funding Formula, Dr. Kelly opined that about a billion dollars of funding would transfer from district to district. As Dr. Kelly testified, however, ending hold harmless “harms” districts in this manner only because Pennsylvania inadequately funds its schools in the first instance, forcing them to compete with each other for a finite and insufficient amount of funding: “The issue is that the pie is too small for adequacy. If the funding was adequate, it wouldn’t be this zero sum ga[me].” Op. at 434, FOF ¶ 1909.
- “As Mr. Splain described, hold harmless is ‘sort of like rearranging . . . the deck chairs on the Titanic[, and w]e’re all going in the wrong direction’ because while “[w]e can change things around,’ ‘if we’re not changing the direction with the funding that’s available, we’re headed in the wrong path when it comes to meeting the needs of our students and of our schools to support those students.’ The concerns that underlie the perceived need for the hold harmless provision provide further support for the existence of the funding shortfalls.” Op. at 679, *see also* Op. at 383, FOF ¶ 1700.

C. Charter schools fare no better in the system, and result in “stranded costs” that must be taken into account.

- “The evidence presented did not show students who attend charter schools fare any better, especially those attending cyber charter schools.” Op. at 715.
- “Mr. Monson also explained that there are “stranded costs” that must be taken into account when a student leaves the district for a charter school. Mr. Monson gave an example of a 4th grade classroom in which 2 of 28 students go to a charter school. As he pointed out, “[t]here are still 26 students behind in that classroom, which means

Basic Education Funding Commission

Appendix of Selected Passages from Commonwealth Court’s Opinion

they still have a teacher, there’s still a counselor . . . assistant principal, . . . building support . . . those expenses don’t go away[.]’ According to Mr. Monson, SDP loses approximately \$4,000 in stranded costs per student.” Op. at 369, FOF ¶ 1624.

- “Dr. Kelly credibly explained there is not a one-for-one tradeoff in costs when a student enrolls in a charter school because not all the district’s expenses associated with educating a student are erased when a student attends a charter school.” Op. at 434, FOF ¶ 1910.

D. A “silent recession:” State funding increases have failed to keep up with inflation and increases in mandated costs.

- “Dr. Kelly testified that pension expenses, one of the mandated costs districts face, dramatically increased from 2008-09 to 2018-19, from 2% to 15% of districts’ total expenses, a sevenfold increase.” Op. at 678, *see also* FOF ¶ 1900.
- “Legislative Respondents’ expert, Mr. Willis, estimated that unreimbursed pension expenses grew to approximately \$1.4 billion from 2010 to 2019, when adjusted for inflation.” Op. at 678, *see also* FOF ¶ 2155.
- “Mr. Willis agreed that these pressures can threaten to destabilize school district budgets and force reductions in services to students. In his words, these pressures can therefore ‘create a silent recession’ for school districts, ‘even in periods of overall state increases in funding.’ Mr. Willis agreed, as did President Pro Tempore’s witness Mr. Donley, that to look at the impact of funding increases to school districts, one must also study school districts’ rising mandated costs.” Op. at 539, FOF ¶ 2155.
- “The state funding increases also do not take into account the increases in mandated costs. For Petitioner Districts and SDP, growth in mandated costs have nearly outstripped every dollar in increases from the Fair Funding Formula. This is true when figures are not adjusted for inflation, as the table below illustrates for Wilkes-Barre. . . . And this is true when revenues and expenditures are adjusted for inflation[.]” Op. at 604, FOF ¶¶ 2284-2285.

E. Fund balances are imperative for sound fiscal management and not the cause of inadequate resources.

- “Several of the districts’ financial managers testified that while there are fund balances, many of these are required by GASB rules and are not actually expendable

Basic Education Funding Commission

Appendix of Selected Passages from Commonwealth Court’s Opinion

dollars. Thus, the amounts and existence of fund balances can be somewhat misleading. Furthermore, the fund balances are extremely important to enable the districts to continue operations when state and other funding is delayed, or there are unexpected expenses, which even Mr. Donley acknowledged, adding the General Assembly also has fund balances. For instance, rating agencies view districts with smaller fund balances as a credit risk. ... Thus, based on the credited evidence presented, the Court does not find district fund balances contribute to funding inadequacies.” Op. at 680-81; *see also* Op. at 99, FOF ¶ 387, *id.* 100, FOF ¶¶ 391-393.

- “[S]chool districts have had to use fund balances to stay afloat when the Commonwealth indefinitely delays enacting a budget, as happened for nearly a year in the 2015-16 school year.” Op. at 101, FOF ¶ 396.
- “Mr. Donley admitted that the Commonwealth’s failure to pass a budget forced school districts to borrow \$1 billion in funds to stay afloat, taking on tens of millions of dollars in interest payments. (Tr. at 11751-52.)” Op. at 101, FOF ¶ 397.
- “In other instances, districts need to use fund balances to make capital improvements, planned or unplanned, or to handle other unforeseen expenses.” Op. at 102, FOF ¶ 398; *see also* Op. at 100-102, FOF ¶¶ 393-398.
- *See also* Op. at 343, FOF ¶ 1483 (William Penn’s fund balance dwindled to about two days’ worth of operations at one point despite routine tax increases and budget cuts); *id.* 267, FOF ¶ 1148 (Shenandoah Valley’s fund balance will be used to replace a decades-old boiler, purchase vans to transport special education students, and replace technology); *id.* 192, FOF ¶ 806 (Absent ESSER funding, Panther Valley’s fund balance would have been negative).

F. National comparisons and national figures on PA spending are not accurate.

- “Dr. Kelly also addressed the Census data upon which Legislative Respondents sought to rely on for their per-pupil expenditures and revenue for Pennsylvania students. According to Dr. Kelly, the Census information is not reliable because it reports far higher per-student levels of expenditures and revenues for Pennsylvania than Pennsylvania itself reports. For example, Dr. Kelly testified the Census reports that Pennsylvania’s per-pupil revenue is \$20,434 for the 2017-18 fiscal year. Yet, Dr. Kelly explained the Department reports per-ADM revenue for the same time period is

Basic Education Funding Commission

Appendix of Selected Passages from Commonwealth Court’s Opinion

\$17,622.37, a difference of roughly \$3,000 per student. . . . This Court finds Dr. Kelly’s explanation as to why these differences exist to be credible. First, Dr. Kelly testified the Census double-counts revenues that flow to charter schools, counting them once as they go to school districts and then again as they are passed through to charter schools, which results in the Census over-reporting Pennsylvania’s total revenues. Second, Dr. Kelly explained the Census undercounts the total number of students for whom those funds are paid, by leaving charter students out of its denominator.” Op. at 442, FOF ¶¶ 1940-41.

- “Making the Grade further noted that correcting for the error made particularly significant differences in evaluating the funding equity of states like Pennsylvania because “[t]hese states have reasonably large charter populations that are concentrated in high-poverty districts. The inflated per-pupil revenues in mostly high-poverty districts made these states look more progressive than they actually are.” Op. 519, FOF ¶ 2119.