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**Testimony of Dan Urevick-Ackelsberg
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Chair Sturla, Chair Phillips-Hill, and Members,

It has been my honor, and the honor of my colleagues and co-counsel, to represent the school districts, organizations, and families that brought Pennsylvania's school funding litigation.¹

In my testimony I offer you some guidance on what the Court decided, including some familiar school funding myths it considered and rejected. Second, I outline how this Commission can put the Commonwealth on a path to constitutional compliance. Third, I explain what the Supreme Court and Commonwealth Court alike have said about the primacy of education under our constitution.

I have also attached to my testimony a selection of topics that the Court covered in its decision. Those are not intended to be complete, but to assist the Commission in discerning what the Court held, and why.

I. How the Court ruled and why

A. Every child can learn

Much of the Court's opinion in this case rested upon a foundational understanding: "**every child can learn**, regardless of individual circumstances, with the right resources."² Once you accept this basic tenet, which was true in 1874 when the guarantee of a thorough and efficient education was added to the Constitution, and which as "[a]ll witnesses agree[d]" at trial, is true today,³ everything that follows is clear.

¹ The Petitioners in the case were William Penn School District, Panther Valley School District, Shenandoah Valley School District, Greater Johnstown School District, Wilkes Barre Area School District, and the School District of Lancaster. They were joined by the NAACP-Pennsylvania State Conference, the Pennsylvania Association of Rural and Small Schools, and families.

² *William Penn Sch. Dist. v. Pennsylvania Dep't of Educ.*, 587 M.D. 2014 (Feb. 7, 2023), Slip. Opinion ("Op.") at 717-18.

³ Op. at 778.

B. Children are being deprived of the resources you all have deemed “essential”

If all children can learn with the right resources, the next logical question is whether they have those resources: the “courses, curricula and programs, staffing, facilities, and instrumentalities of learning” that the Court held to be the components of an effective, contemporary system.⁴

And the Court concluded they do not. Instead, the Court held that because of the way we fund our schools, students are being deprived of the very resources you all have “identified as essential to student achievement, some of which are as basic as safe and temperate facilities in which children can learn.”⁵ In fact, the Court found that educators were “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.”⁶

Educators were not asking the Court to bestow upon them money for something frivolous or radical. Rather, they were seeking sufficient resources to use tried and true methods to teach their children to read, to become skilled at math, and to ready themselves for college or a family-sustaining career as engaged, able citizens.

C. The funding system is failing

The Court recognized that to determine how our system is faring, one must also ask how our students are actually doing. And the Court concluded that “[t]he effect of this lack of resources shows in the evidence of outcomes,” including unacceptable results on state assessments, AP exams, and SATs; low high school graduation rates and post-secondary enrollment and attainment rates; and poor marks on other measures, such as rigorous courses of study.⁷

Ultimately, despite knowing that all children can learn, our system has failed to sufficiently prepare many of them for success in life. The Court explained why: Because the funding system has created “manifest deficiencies” in the resources all agreed were essential.

D. The system’s failures are particularly placed upon the shoulders of low-income children and children of color

These failures are not felt evenly. As Pennsylvania Department of Education witnesses readily admitted at trial, the Commonwealth has some of the largest

⁴ Op. at 774.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

achievement gaps in the nation, for low-income students, Black students, and Latino students. By way of example, for years, less than twenty percent of Black children have been proficient in math. Just twenty percent of Black, Latino, or low-income graduates of Pennsylvania public schools will go on to get a two- or four-year post-secondary degree. In fact, these gaps are so big that PDE could not even set uniform goals for all student subgroups in its ESSA plan. That means that “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.”⁸

PDE was clear in its testimony at trial that the decision to set different goals for different groups of students “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.”⁹ As the former Deputy Secretary of Education testified: “The very starting point is a reflection of the historic inequities in our system that have created the conditions.”¹⁰

E. The failures are caused by a system that is heavily reliant on local wealth, which fails to account sufficiently for student need

And so because all children can learn, but many are being deprived of resources and of the most important opportunities of their lives, the Court reached the only logical conclusion: Our educational funding system is broken to such a degree that it is unconstitutional. It is unconstitutional because it is a “system that is heavily dependent on local tax revenue, which benefits students in high-wealth districts,”¹¹ and because our funding method “does not adequately take into account student needs, which are generally higher in low-wealth districts”¹²

In other words, it is a system where opportunity is too often defined by the fortune of your neighbors. Low-wealth districts aren’t underfunded in Pennsylvania because their communities don’t try hard to support their schools. In fact, as a group, they try the hardest. Low-wealth districts are underfunded because their communities are low-wealth. And that, the Court ruled, violates our charter of government.

F. The solution cannot be found in hot-button Pennsylvania issues of the past

In its decision, the Court either directly or indirectly addressed virtually every common dispute raised in Pennsylvania school funding debates. The Court’s decision:

⁸ Op. at 578.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Op. at 769.

¹² *Id.*

- Held that the Constitution requires a contemporary, comprehensive, effective *public* education for every child;
- Found that charter schools perform no better in the current funding system than district schools;
- Found that national comparisons of Pennsylvania school spending are often inaccurate;
- Found that federal COVID aid was important, but could not solve our long-term problem; and,
- Found that district fund balances were needed and not the cause of inadequacy.

II. How the Commission can help bring the system into compliance

Past education commissions have provided meaningful final products, including the creation of the Fair Funding Formula itself just a few years ago by the Basic Education Funding Commission. But the system remains unconstitutional despite those efforts. Accordingly, we offer four core recommendations for how this Commission can provide a real roadmap for making this system constitutional.

A. Create serious adequacy targets for what schools need in order to provide their students a comprehensive, effective, contemporary education

The Commission’s foundational task is to calculate how much funding each school district needs to provide all children a comprehensive, effective, and contemporary education, no matter their needs and no matter where they live, such that students can succeed in life and meet state goals. As Leader Cutler’s expert witness in this matter has explained: “[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.”¹³

What Petitioners’ expert Dr. Kelly has made clear is that through the Fair Funding Formula and Special Education Funding Formula, the Commission already has an established pathway to accomplish this. We know the costs relative to need in those districts that are performing well. It is now incumbent to bring all districts to that level, such that they can all provide adequate opportunities to their students. Serious adequacy targets will not only help solve the system’s constitutional deficiencies in the long-term, but will end the year-after-year budget fights that have sometimes paralyzed the Commonwealth.

¹³ Op. at 538, FOF ¶ 2153.

B. Determine a fair and equitable “state share” for those targets, so that all school districts can reach adequate funding at a reasonable tax effort

The Commission must also identify a feasible, equitable approach for determining a state share that enables school districts to meet their adequacy targets. As the Court explained, low-wealth school districts in Pennsylvania cannot tax their way to sufficient funding, and generally have the highest tax rates in the Commonwealth. Ultimately, establishing a thorough and efficient system of education is the Commonwealth’s responsibility, and even “recitations of the need for local control cannot relieve the General Assembly of its exclusive obligation under the Education Clause.”¹⁴

C. Address funding for special education, pre-Kindergarten and facilities, among other things

The Court’s opinion made plain the Constitution requires adequate funding for all aspects of public education, from pre-Kindergarten programs to appropriate facilities.

Money is fungible. When the Commonwealth fails to adequately fund one component of the system, school districts often respond by diverting funds from another. At trial, the then-Chief Financial Officer of the School District of Philadelphia, now the Commonwealth’s Budget Secretary, explained how this trade-off works in practice:

If I don’t do that roof, it means I can afford to keep teachers in the school or certain resources or purchase more computers or whatever the — it — you’re constantly making choices and trying to get one more year out of that roof, trying to get one more year out of whatever. Eventually that deferred maintenance its going to catch up to you, especially across a broad array of systems.¹⁵

It is critical to consider how Pennsylvania ensures all aspects of this system are adequately funded. Dr. Kelly has provided a method for calculating adequacy for basic education and special education that folds in a number of other critical line items, from CTE funding, to transportation funding, to charter school reimbursements. And he calculated the cost of fully funding Pre-K Counts across the Commonwealth.

D. Meet the urgency of the problem

We did not create the deficiencies that plague our system in a year, and we will not dig ourselves out of them in a year, either. The task of bringing our public education

¹⁴ Op. at 770.

¹⁵ Op. at 361.

system into compliance requires all of us to articulate a clear vision for the future, and an action plan to rebuild school buildings and teacher pipelines, alike. But it also requires an urgent solution now. A child is in Kindergarten once, and once only. In fact, if she was starting Kindergarten in one of our districts when this lawsuit was filed, she would be entering high school this month, having spent her entire childhood in underfunded schools. We cannot let another generation of children pass by before getting this right.

III. The primacy of education means that sufficiently funding schools is a mandate, not a choice

The undertaking ahead of you is no small order, and it will require a significant investment of resources. Dr. Kelly’s estimate, for example, requires approximately a 20% increase in current expenditures statewide. But education’s central place in the Constitution means that no matter the difficulty, your duty remains.

The Supreme Court explained this once before, when in 2017 it ruled for Petitioners, and sent the case back to Commonwealth Court to conduct discovery and hold a trial. The Court acknowledged then that you all have a tough job, remarking that there are surely “many competing and not infrequently incompatible demands [you] face to satisfy non-constitutional needs, appease dissatisfied constituents, and balance a limited budget in a way that will placate a majority of members in both chambers despite innumerable differences regarding policy and priority.”¹⁶ But the Supreme Court was clear that the constitutional mandate to provide a thorough and efficient system of public education was non-negotiable, and that the courts would “monitor the General Assembly’s efforts in service of its mandate and . . . measure those effects against the constitutional imperative, ensuring that non-constitutional considerations never prevail over that mandate.”¹⁷

These efforts were measured at trial, and found to be insufficient: the Commonwealth Court ruled that you all “have not fulfilled [your] obligations to all children under the Education Clause,” and that “[s]tudents who reside in school districts with low property values and incomes are deprived of the same opportunities and resources as students who reside in school districts with high property values and incomes.”¹⁸

Still, the Court explained it was giving all of you the opportunity to make this right in the first instance: that it was “only reasonable to allow Respondents, comprised of the Executive and Legislative branches of government and administrative agencies with

¹⁶ *William Penn Sch. Dist. v. Pennsylvania Dep’t of Educ.*, 170 A.3d 414, 464 (Pa. 2017).

¹⁷ *Id.*

¹⁸ *William Penn Sch. Dist. v. Pennsylvania Dep’t of Educ.*, 587 M.D. 2014 (Feb. 7, 2023), Order at 2.

expertise in the field of education, the first opportunity, in conjunction with Petitioners, to devise a plan to address the constitutional deficiencies identified herein.”¹⁹

The Court’s judgment is also an opportunity for you all to claim the mantle of history. The forefather of Pennsylvania’s modern educational system was one of our most cherished citizens: Thaddeus Stevens. In 1834, while defending the earliest form of our statewide system from an attempted repeal by the Pennsylvania House, Stevens implored his colleagues to take “lofty ground, look beyond the narrow space which now circumscribes our vision, beyond the passing, fleeting point of time on which we stand and . . . cast our votes” so that the “blessing of education shall be conferred on every son of Pennsylvania: carried home to the poorest child of the poorest inhabitant of the meanest hut of your mountains, so that even he may be prepared to act well his part in this land of freedom.”²⁰

What this moment calls for is plain: to make the blessing of education work for every citizen. The reward for that effort is not simply compliance, but rather a stronger economy, stronger families, stronger communities, and a stronger Commonwealth.

We stand ready to work with this Commission to live up to the Court’s command, and to our Commonwealth’s promise to its future fellow citizens.

¹⁹ Op. at 775-76.

²⁰ *The Famous Speech of Hon. Thaddeus Stevens of Pennsylvania in Opposition to the Repeal of the Common School Law of 1834, in the House of Representatives of Pennsylvania, April 11, 1835, 12.*