THE ARC FROM NON-JUSTICIABLE TO FUNDAMENTAL: THE HISTORY OF SCHOOL FUNDING CHALLENGES IN PENNSYLVANIA

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INTRODUCTION

Pennsylvania has recognized the importance of public education since the Commonwealth's inception in 1776.[1] Although early versions of the Pennsylvania Constitution only contemplated a discretionary system of schools for poor children,[2] in 1834 the state's public education system was expanded through statute to provide schooling to all children.[3] Thaddeus Stevens, one of the founding fathers of this expansion, explained that the purpose of a universal public education system was to ensure that "the blessing of education shall be conferred on every son of Pennsylvania—shall be 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[.]"[4]

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[1] William Penn Sch. Dist. v. Pennsylvania Dep't of Educ. (*William Penn II*), 170 A.3d 414, 423 (Pa. 2017); *see* PA. CONST. of 1776 § 44 (1776) ("A school or schools shall be established each county by the legislature, for the convenient instruction of youth, with such salaries to the masters paid by the public, as may enable them to instruct youth at low prices: And all useful learning shall be duly encouraged and promoted in one or more universities.").

[2] *See* PA. CONST. of 1790, art. VII, § 1 ("The Legislature shall, as soon as conveniently may be, provide by law, for the establishment of schools throughout the state, in such manner that the poor may be taught gratis.").

[3] *William Penn II*, 170 A.3d at 421 (quoting Samuel Hazard, *System of Education, Report of the Joint Committee of the two Houses of the Pennsylvania Legislature, on the subject of System of General Education*, XIII HAZARD'S REGISTER OF PA. 97, 97 (1834)).

[4] Thaddeus Stevens, Steven's Great Speech in Opposition to the Repeal of the Common School Law of Pennsylvania (April 11, 1835), in THE SPEECH OF

This vision was ultimately constitutionalized in 1874, when the Pennsylvania Constitution's Education Clause was amended to require the General Assembly to provide a "thorough and efficient system of public schools, wherein all the children of [the] Commonwealth . . . may be educated."[5] The revised Education Clause reflected the ratifiers' view that "it is the duty of the State, as a matter of justice and self-preservation, that every child in the Commonwealth should be properly educated and trained for the high and responsible duties of citizenship[,]"[6] and their commitment to ensuring that "every child of the Commonwealth shall be educated and taken care of."[7]

Ultimately, however, it would take nearly 150 years for a Pennsylvania court to recognize this guarantee. That landmark decision, *William Penn School District v. Pennsylvania Department of Education*,[8] came "with sweeping implications for public schools, students, and taxpayers across the state."[9]

The journey of *William Penn*, from its filing to its final judgment, was a winding one, turning back precedent that had closed the courthouse doors to school funding litigants before proceeding to a four-month trial and culminating in a judicial declaration that the Commonwealth's public education system, which serves 1.7 million children, was wholly unconstitutional.

This article describes that journey from the perspective of attorneys who helped litigate the case on behalf of the *William Penn* Petitioners. Part I summarizes the origins of today's Education Clause. Part II examines early attempts to use the Education Clause to challenge the adequacy of Pennsylvania's funding scheme. Part

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HON. THADDEUS STEVENS IN FAVOR OF FREE SCHOOLS 12 (Thaddeus Stevens Mem'l Ass'n of Phila. ed., 1904). Many years later, Thaddeus Stevens would become one of the most prominent abolitionists in Congress.

[5] PA. CONST. of 1874 art. X, § 1 (1874).

[6] 2 DEBATES OF THE CONVENTION TO AMEND THE CONSTITUTION OF PENNSYLVANIA 472 (Benjamin Singerly ed., 1873).

[7] *Id*. at 692.

[8] William Penn Sch. Dist. v. Pennsylvania Dep't of Educ. (*William Penn III*), 294 A.3d 537 (Pa. Commw. Ct. 2023).

[9] Maddie Hanna, *Pa. lawmakers won't appeal the landmark school funding decision*, PHILA. INQUIRER (June 24, 2023), https://www.inquirer.com/education/pa -school-funding-decision-appeallawmakers-20230724.html.

III provides an in-depth examination of *William Penn* from its inception in 2014 to the Commonwealth Court's landmark ruling in 2023. Part IV looks ahead to the future of school funding reform in Pennsylvania.

I. THE ORIGINS OF TODAY'S PENNSYLVANIA EDUCATION CLAUSE

The origins of today's Education Clause can be traced to a statewide convention organized in 1872 to consider revisions to the Pennsylvania Constitution. By that time, it had become clear that the Commonwealth's statutory public education system, instituted almost 40 years prior, was falling short. As the Pennsylvania Supreme Court would explain it, this was because "the administration of the school law was intrusted [sic] almost wholly to the particular locality constituting the school district," resulting in disparate educational opportunities for the Commonwealth's schoolchildren:

> In one district would be found excellent teachers, ample and comfortable school rooms, with suitable school apparatus, and a term of eight to ten months. In another district perhaps in the same county, would be found incapable teachers, rude and insufficient buildings, not supplied with any of the aids to teaching, such as globes, blackboards, and other school furniture, with a term of four months.[10]

In sum, "[t]he school laws[,] as administered[,] had not accomplished nearly to the full extent the purpose of its founders. Hence the mandate of the new constitution."[11]

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[10] *In re* Walker, 36 A. 148, 149 (Pa. 1897); *see also* Derek W. Black, *Localism, Pretext, and the Color of School Dollars*, 107 MINN. L. REV. 1415, 1445 (2023) (citing DEBATES OF THE CONVENTION TO AMEND THE CONSTITUTION OF PENNSYLVANIA (Benjamin Singerly ed., 1873)) ("While many local communities have long invested funds to support education, local school funding never produced a 'system' of education capable of serving all students.").

[11] *In re Walker*, 36 A. at 149.

The 1872-1873 Constitutional Convention was held during a "unique time of fear of tyrannical corporate power and legislative corruption,"[12] a climate of distrust that arose in part from the General Assembly's track record on school finance: the transcripts of the Convention debates are peppered with criticism of the state's failure to adequately fund the public education system, with one delegate voicing frustration that "the Legislature on the subject of appropriations for common schools and educational purposes has been very careful to make the sums very small. The sums heretofore appropriated . . . have been a mere pittance[.]"[13] Other delegates decried the then-current arrangement, which mandated a system of public schools "at the expense of the State," and then forced localities to pay for that system, as a "farce."[14]

Accordingly, the Convention delegates sought to remove education from the discretion of the General Assembly, and instead establish within the constitution "a positive mandate that no legislature could ignore."[15] The Convention debates demonstrate the delegates' determination to use the constitution as a vehicle to ensure a public school system "in which all the children of the Commonwealth can acquire the highest branches of education[.]"[16] And the delegates repeatedly asserted that the end goals of this system were self-sufficiency and democratic participation, based on their view that "the safety of the State and the safety of the government depends upon the education of all the children."[17]

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[12] Pennsylvanians Against Gambling Expansion Fund, Inc. v. Commonwealth, 877 A.2d 383, 394 (Pa. 2005); *William Penn II*, 170 A.3d at 423 n.13.

[13] 6 DEBATES OF THE CONVENTION TO AMEND THE CONSTITUTION OF PENNSYLVANIA 56 (Benjamin Singerly ed., 1873).

[14] DEBATES OF THE CONVENTION TO AMEND THE CONSTITUTION OF PENNSYLVANIA, *supra* note 6, at 679.

[15] Malone v. Hayden (Teachers' Tenure Act Cases), 197 A. 344, 352 (Pa. 1938).

[16] DEBATES OF THE CONVENTION TO AMEND THE CONSTITUTION OF PENNSYLVANIA, *supra* note 6, at 426.

[17] DEBATES OF THE CONVENTION TO AMEND THE CONSTITUTION OF PENNSYLVANIA, *supra* note 13, at 64; *see also, e.g.*, DEBATES OF THE CONVENTION TO AMEND THE CONSTITUTION OF PENNSYLVANIA, *supra* note 6, at 421; DEBATES OF THE CONVENTION TO AMEND THE CONSTITUTION OF PENNSYLVANIA, *supra* note 13, at 45 ("If we are all agreed upon any one thing it

The delegates sought to ensure the General Assembly would provide this caliber of education to *all* children, regardless of geography or wealth: they rejected proposals to provide different educational opportunities to different classes of children in favor of a single, statewide system that would "have no distinctions, no separate provisions for one class of children over another[,]" but instead to "provide for them all in the same section and all alike."[18] And the delegates took several steps to ensure the General Assembly could not shirk its constitutional duties, specifying that the new system had to be "thorough and efficient," and that the General Assembly had to appropriate at least one million dollars to fund that system—a forty forty percent increase over what had been allocated for schools the year prior.[19]

The resulting Education Clause, which was ratified in 1874, read:

> The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public schools, wherein all the children of this Commonwealth above the age of six years may be educated, and shall

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is, that the perpetuity of free institutions rests, in a large degree, upon the intelligence of the people, and that intelligence is to be secured by education."); DEBATES OF THE CONVENTION TO AMEND THE CONSTITUTION OF PENNSYLVANIA, *supra* note 13, at 45 ("In the uneducated ballot is found the nation's greatest danger; but the educated ballot is the nation's main tower of strength."); 3 DEBATES OF THE CONVENTION TO AMEND THE CONSTITUTION OF PENNSYLVANIA 345 (Benjamin Singerly ed., 1873) (stating that "we stand on the great fundamental principle that our people must be educated" and describing education as a "great fundamental right"); DEBATES OF THE CONVENTION TO AMEND THE CONSTITUTION OF PENNSYLVANIA, *supra* note 13, at 44 ("[t]he child himself has a right to such training as will fit him for usefulness and enjoyment in life"); 1 DEBATES OF THE CONVENTION TO AMEND THE CONSTITUTION OF PENNSYLVANIA 206 (Benjamin Singerly ed., 1873) ("The permanency of our form of government, as well as the liberty, prosperity and happiness of our people, depend upon the education of the youth").

[18] DEBATES OF THE CONVENTION TO AMEND THE CONSTITUTION OF PENNSYLVANIA, *supra* note 13, at 46.

[19] Transcript of Proceedings Testimony at 946, William Penn. Sch. Dist. v. Pennsylvania Dep't of Educ., 294 A.3d 537 (Pa. Commw. Ct. 2023) (No. 587 M.D. 2014).

> appropriate at least one million dollars each year for that purpose.[20]

After 1874, the Education Clause was not amended again until the 1960s, when it was revised as part of a series of ballot measures intended to modernize the constitution.[21] As part of this revision, the Education Clause's out-of-date million-dollar appropriation and language specifying that the clause applied to "all children" were removed as "obsolete."[22] The phrasing of the end of the clause was thus changed from "thorough and efficient system of public schools, wherein all the children of this Commonwealth above the age of six years may be educated" to "thorough and efficient system of public education to serve the needs of the Commonwealth."[23] The phrase "to serve the needs of the Commonwealth" had been proposed by Project Constitution, an initiative formed by the Pennsylvania Bar Association to recommend revisions to the constitution, based on its opinion that "the system of public education should not necessarily be limited to serve the needs of children as the constitution now provides."[24] The clause's mandate upon the Legislature to "provide for the maintenance and support of a thorough and efficient system of public education" was retained and ratified by voters in 1967.[25]

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[20] PA. CONST. art. X, § 1 (1874).

[21] *See* M. Nelson McGeary, *Pennsylvania's Constitutional Convention in Perspective*, 41 PA. B. ASS'N Q. 175, 176 (1970).

[22] *See, e.g.*, H.R. JOURNAL, 151st Gen. Assemb., Sess. of 1967, Vol. 1, No. 6 at 80 (Jan. 30, 1967) ("Section 14 updates the constitution by replacing the obsolete requirement that all children of the Commonwealth above the age of six be educated, and at least $1 million be spent for that purpose.").

[23] PA. CONST. art. X, § 1 (1874); H.R. JOURNAL, 151st Gen. Assemb., Sess. of 1967, Vol. 1, No. 6 at 80 (Pa. Jan. 30, 1967).

[24] REPORT OF COMMITTEE NO. 10 ON EDUCATION, 34 PA. BAR. ASS'N Q. 304, 304-05 (Pa. Jan. 1963); *see also* REPORT OF COMMITTEE NO. 10 ON EDUCATION, 33. PA. BAR ASS'N Q. 466, 466-67 (Pa. Jun. 1962) ("[O]ne member of the Committee raised the point that the language 'wherein all the children of the Commonwealth may be educated,' . . . might raise a question whether the public schools could be used for adult education. In these days when automation is putting many workers in the ranks of the unemployed, there is a growing need for retraining these workers and there should be no restriction on the Legislature's right to make provision for such retraining.").

[25] H.R. JOURNAL, 151st Gen. Assemb., Sess. of 1967, Vol. 1, No. 6 at 80 (Jan. 30, 1967).

Today, the Education Clause reads: "The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth."[26]

II. THE FIRST ATTEMPTS TO GIVE THE EDUCATION CLAUSE "MEANING AND FORCE"

Despite the fact that the Education Clause has obligated the General Assembly to provide a "thorough and efficient" system of education since 1874, it would take almost 150 years for the Pennsylvania Supreme Court to declare that the Education Clause was judicially enforceable and to empower courts to give it "meaning and force."[27] Before that point, multiple litigants attempted to use the Education Clause to challenge the adequacy of Pennsylvania's school funding system, and each failed, generating a confusion of precedent that, until the Pennsylvania Supreme Court set it aside as "def[ying] confident interpretation,"[28] rendered school funding challenges under the Education Clause non-justiciable.

a. An Unusual Beginning: The Teachers' Tenure Act Cases

Most modern litigation arising under state education clauses is about whether a state has done enough to satisfy its constitutional obligation to fund education.[29] But early cases involving the Pennsylvania Education Clause were not about the adequacy of the state's funding system. Instead, they focused on an array of other issues, from school district tax liability[30] to the role of schools in

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[26] PA. CONST., art III, § 14 (1968).

[27] William Penn Sch. Dist. v. Pa. Dep't of Educ., 170 A.3d 414, 457 (Pa. 2017).

[28] *Id*. at 441.

[29] *See, e.g.*, Michael A. Rebell, *State Courts and Education Finance: Past, Present and Future*, 2021 B.Y.U. EDUC. & L. J. 113, 113 (2021) ("Over the past half century, state courts in 48 of the 50 states have wrestled with challenges to state education finance systems brought by students, parents, teachers and education advocates who claim that funding for their schools is either inequitable, inadequate, or both.").

[30] City of Pittsburg v. Sterrett Subdistrict Sch., 54 A. 463 (Pa. 1903).

guarding public health.[31] To the extent those challenges implicated the Education Clause, courts were asked to consider whether a specific state law or school district action had encroached upon or impeded the Education Clause's mandate.[32]

In one such case, *Malone v. Hayden* (the "*Teachers' Tenure Act Cases*"), the Pennsylvania Supreme Court considered whether, in passing legislation that removed the ability of school districts to fire teachers without cause and gave teachers due process rights of appeal, the legislature had "abridge[d] the right of future Legislatures to enact appropriate laws in the exercise of the governmental function as prescribed by" the Education Clause.[33] In other words, the question before the court in the *Teachers' Tenure Act Cases* was not whether the General Assembly had done enough under the Education Clause, but whether it had done too much.

To assess the validity of the Teachers' Tenure Act under the Education Clause, the Pennsylvania Supreme Court applied what would become known as the "reasonable relation" test:

> In considering laws relating to the public school system, courts will not inquire into the reason, wisdom, or expediency of the legislative policy with regard to education, but whether the legislation has a reasonable relation to the purpose expressed in [the Education Clause], and whether the fruits or effects of such legislation impinge the article by circumscribing it, or abridging its exercise by future Legislatures within the field of "a thorough and efficient system of public schools."[34]

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[31] Sch. Dist. of Nether Providence Twp. v. Montgomery, 76 A. 75 (Pa. 1910) (rejecting challenge to law mandating school districts spend funds on prevention of smallpox).

[32] *Id.*; *see also, e.g.*, Bd. of Pub. Educ. of First Sch. Dist. v. Ransley, 58 A. 122 (Pa. 1904); Kaine v. Commonwealth, 101 Pa. 490, 490 (1882).

[33] Malone v. Hayden (*Teachers' Tenure Act Cases*), 197 A. 344, 350 (Pa. 1938); *William Penn II*, 170 A.3d at 440 (describing the question before the court in *Teachers' Tenure Act Cases* as "whether the Teachers' Tenure Act would preclude or interfere with future legislatures' freedom to refine and innovate education policy, thus confounding the Education Clause's inferred purpose to afford the General Assembly precisely such latitude.").

[34] *Teachers' Tenure Act Cases*, 197 A. at 352.

The rationale undergirding this test was that "[t]he very essence of [the Education Clause] is to enable successive Legislatures to adopt a changing program to keep abreast of educational advances[,]" and that therefore "[o]ne Legislature cannot bind the hands of a subsequent one; otherwise we will not have a thorough and efficient system of public schools."[35] Pursuant to this framework, the court upheld the Teachers' Tenure Act, explaining that it did not "abridge[] the power of future Legislatures . . . because a subsequent Legislature may abolish this act, in toto, if it deems it necessary to do so under" the Education Clause.[36]

The *Teachers' Tenure Act Case*s were issued while both the Supreme Court of the United States and the Pennsylvania Supreme Court were grappling with the scope of legislative power to regulate for the social welfare,[37] but it is now an unremarkable truism that a state legislature has broad discretion to pass legislation.[38] Accordingly, the outcome of the *Teachers' Tenure Act Cases* was straightforward: a law concerning education, which can be repealed at any time, is unlikely to be a per se violation of the Education Clause. However, the school funding challenges that followed would end up tangled in the potential implications of this premise.

b. The First Adequacy Challenge Fails: Danson v. Casey

In 1977, the first major case[39] to assert that the Commonwealth was not fulfilling its constitutional obligation under the Education

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[35] *Id.*

[36] *Id.* at 353.

[37] *E.g.*, United States v. Carolene Prod. Co., 304 U.S. 144, 152 (1938); Harris v. State Bd. of Optometrical Examiners of Dep't of Pub. Instruction of the Commonwealth, 135 A. 237, 240 (Pa. 1926) ("The prohibition as to peddling of glasses by optometrists is a reasonable exercise of the police power by the Legislature, having a direct and reasonable relation to the health of the people.").

[38] Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519, 536 (2012) (describing a "general power of governing, possessed by the States but not by the Federal Government").

[39] One month later, a group of Philadelphia citizens filed suit against the School District of Philadelphia, alleging it was failing to budget for a constitutionally adequate education. Coal. for a Thorough & Efficient Educ. Sys. v. Marcase, 2 Pa. D. & C.3d 545, 546 (Pa. Com. Pl. 1977). That suit was dismissed

Clause was filed in state court.[40] In *Danson v. Casey*, the School District of Philadelphia and Philadelphia parents brought suit in Commonwealth Court, asserting claims under both the Education Clause and Article III, Section 32, one of Pennsylvania's Equal Protection Clause analogues.[41] petitioners alleged that Philadelphia was being provided insufficient funding, such that "viewed as a whole, the Pennsylvania system of school financing fails to provide Philadelphia's public school children with a thorough and efficient education and denies them equal educational opportunity solely because of their residence in the School District of Philadelphia."[42]

The Commonwealth Court sustained preliminary objections for failure to state a claim.[43] The court rejected petitioners' equal protection claim on the basis that the classification proposed by the claimants, based upon the educational needs of children, was non-justiciable.[44] But the court also rejected petitioners' equal protection claim on the merits, invoking *Teachers' Tenure Act Cases* for the proposition that judicial review of legislation regarding education should be limited to whether the legislation has a reasonable relation to a "thorough and efficient system of public schools[.]"[45] Accordingly, the court ruled that because Philadelphia "receive[d] a significant State subsidy that helps local government administer its delegated responsibilities, the School Code bears a rational relation to its avowed purpose."[46]

The court then considered petitioners' Education Clause claim. The court noted that the clause "does impose a duty upon the legislature to provide equal educational opportunity to the Commonwealth's school children, and that this duty exists separate

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for the failure to join the Commonwealth and Philadelphia City Council as indispensable parties. *Id.* at 553-54.

[40] Danson v. Casey, 382 A.2d 1238, 1239-40 (Pa. Commw. Ct. 1978), *decree aff'd*, 399 A.2d 360, 367 (1979). The case was filed after Petitioners' federal Fourteenth Amendment claim based on the same facts was dismissed in federal court. *Danson*, 382 A.2d at 1243 n.14 (citing Danson v. Commonwealth, No. 72-2448 (E.D.Pa., filed March 10, 1977)).

[41] Danson v. Casey, 399 A.2d 360, 362 (Pa. 1979).

[42] *Id*. at 363.

[43] *Danson*, 382 A.2d at 1247.

[44] *Id.* at 1246.

[45] *Id.* (quoting *In re* Teachers' Tenure Act Cases, 197 A. 344, 352 (Pa. 1938).

[46] *Id.* at 1245.

and apart from the proscription against special laws contained within Article III, Section 32."[47] But the court concluded that the same deferential review it had applied to petitioners' equal protection claim —a "fair and substantial relation test"—should be used to assess the Education Clause challenge.[48] Using that test, the court examined the state's formula, found that it made some effort to equalize funds between districts, and held that "any compromises of that effort are the result of what we feel to be legitimate and strong state objectives of maintaining state and local control and distributing exiguous sums among the many school districts."[49]

On appeal, the Pennsylvania Supreme Court affirmed, dismissing petitioners' case.[50] In its opinion, the court also relied heavily on the *Teachers' Tenure Act Cases*, recalling its deferential reasonable relation test and its observation that "the very essence of [the Education Clause] is to enable successive legislatures to adopt a changing program to keep abreast of educational advances" such that one legislature should not "bind the hands" of the next.[51] But rather than simply affirm the Commonwealth Court's ruling and dismiss for failure to state a claim, the *Danson* majority extended the reasoning of *Teachers' Tenure Act Cases*, declaring that "it would be no less contrary to the 'essence' of the constitutional provision for this Court to bind future Legislatures and school boards to a present judicial view of a constitutionally required 'normal' program of educational services."[52] Questioning whether a court could ever "define the specific components of a 'thorough and efficient education' in a manner which would foresee the needs of the future,"[53] the Pennsylvania Supreme Court appeared to decide

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[47] *Id.* at 1246.

[48] *Id*.

[49] *Danson*, 382 A.2d at 1246-47.

[50] *Danson*, 399 A.2d at 363.

[51] *Id.* at 366 (quoting *In re* Teachers' Tenure Act Cases, 197 A. 344, 352 Pa. 1938).

[52] *Id.*

[53] *Id*. at 366.

that adequacy challenges under the Education Clause were non-justiciable.[54]

Despite this conclusion, the court then proceeded to engage in a merits-based analysis that implied such a claim under the Education Clause *was* theoretically cognizable. As the court below had done, the Pennsylvania Supreme Court applied *Teachers' Tenure Act Case*s' reasonable relation test to petitioners' allegations, asserting that "[a]s long as the legislative scheme for financing public education has a reasonable relation to providing for the maintenance and support of a thorough and efficient system of public schools, the General Assembly has fulfilled its constitutional duty to the public school students of Philadelphia."[55] And under this test, the court determined that petitioners' claims would fail because "the Legislature has enacted a financing scheme reasonably related to maintenance and support of a system of public education in the Commonwealth of Pennsylvania.[56] The framework is neutral with regard to the School District of Philadelphia and provides it with its fair share of state subsidy funds."[57]

The ultimate goal of the court's majority's opinion in *Danson* was clear, even if its reasoning was not. The court sought to avoid judicial review of the adequacy of the General Assembly's school funding scheme, concluding that "[t]his court . . . may not abrogate or intrude upon the lawfully enacted scheme by which public education is funded."[58] And the blueprint created by *Danson*'s jumbled approach—deeming challenges to legislative fulfillment of a duty non-justiciable on the one hand, and then dooming those challenges to fail by applying a merits-based test intended to

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[54] *Id.* at 363 (concluding that petitioners' case challenging the adequacy of the system thus "fails to state a justiciable cause of action."). Justiciability was not a basis raised by the parties on preliminary objections, a fact that appears to have been noted by one of the dissenting judges, who criticized the majority for "address[ing] itself to issues that are not even raised by appellants." *Id.* at 368.

[55] *Id*. at 367 (citation omitted).

[56] *Danson*, 399 A.2d at 367.

[57] *Id.*

[58] *Id*.

evaluate legislative overreach, on the other—would not be undone for thirty-eight years.[59]

c. The Door Slams Shut: PARSS v. Ridge and Marrero v. Commonwealth

In 1991, the Pennsylvania Association of Rural and Small Schools (PARSS), along with some of its member districts and community members, brought another school funding challenge under the Education Clause, alleging that the Commonwealth was failing to provide rural and small school districts sufficient funds to provide their students access to a constitutionally adequate, "quality education."[60] Across four weeks, Commonwealth Court Judge Pellegrini presided over a trial in which petitioners sought to establish that the system provided insufficient funding for its members.[61] However, before a ruling was rendered in *PARSS*, another school funding challenge under the Education Clause, *Marrero ex rel. Tabales v. Commonwealth*,[62] would change its trajectory.

Marrero I was brought by Philadelphia parents and students, Philadelphia organizations, the City of Philadelphia, and the School

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[59] *Id.* at 362. In a paragraph, *Danson* also summarily dismissed the petitioners' equal protection claim. That holding did not mention justiciability at all, but rather held the claim failed because "Philadelphia arguably benefits from the operation of the school financing scheme for more sources of taxation are made available to Philadelphia than to any other category of school district." *Id.* at 367. Two justices dissented, and in a more extensive analysis of petitioners' equal protection claim, argued that "the right to a public education is constitutionally recognized in Pennsylvania, any state action interfering with that right must be closely examined before it can be said to pass constitutional muster[,]" and that petitioners had sufficiently alleged an interference with that right to survive preliminary objections. *Id.* at 372 (Manderino, J., dissenting).

[60] Pa. Ass'n of Rural & Small Sch. v. Ridge, No. 11 M.D. 1991, 1998 WL 36042843, *1 and n.1-2 (Pa. Commw. Ct. July 9, 1998). PARSS members in the "small" category of Pennsylvania school districts included urban districts such as Reading, Harrisburg, and York School Districts, along with inner-ring suburbs such as Southeast Delco School District in Delaware County. *Id.* at *22.

[61] *Id.* at *4.

[62] Marrero *ex rel*. Tabales v. Commonwealth (*Marrero I*), 709 A.2d 956 (Pa. Commw. Ct. 1998).

District of Philadelphia.[63] Like in *PARSS*, the *Marrero I* petitioners alleged that the Commonwealth had failed to provide petitioners with adequate funding "to meet the unique educational needs of its students" or "build and maintain the facilities and equipment to provide [them] an adequate education[.]"[64] But *Marrero I* did not reach trial. On preliminary objections, Respondents raised *Danson* for the proposition that the issues presented were "not capable of resolution by judicially discoverable and manageable standards" other than the one *Danson* had identified and then rejected: pure uniformity from district to district.[65]

An en banc Commonwealth Court sustained preliminary objections, holding that it was "unable to judicially define what constitutes an 'adequate' education or what funds are 'adequate' to support such a program."[66] With a nod to the Supreme Court of the United States' political question doctrine from *Baker v. Carr*,[67] but with little application of *Baker's* test for deciding the question, the Commonwealth Court found the matter non-justiciable under *Danson*, declaring that "court[s] will not inquire into the reason, wisdom, or expediency of the legislative policy with regard to education, nor any matters relating to legislative determinations of school policy or the scope of educational activity."[68]

Yet, like in *Danson*, the *Marrero I* court also seemingly reached the merits of petitioners' allegations, once again applying the reasonable relation test to evaluate petitioners' adequacy claim.[69] The court's application of the test made plain just how meager of a review it was: the court concluded that the General Assembly had met its "constitutional mandate by enacting a number of statutes relating to the operation and funding of the public school system in both the Commonwealth and, in particular, in the City of

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[63] *Id.* at 957.

[64] *Id.* at 958.

[65] Brief of Executive Branch Respondents in Support of Preliminary Objections at 14, *Marrero I*, 709 A.2d 956 (Pa. Commw. Ct. 1998) (No. 182 M.D. 1997).

[66] *Marrero I*, 709 A.2d at 965.

[67] *Id.* at 960 (citing Baker v. Carr, 369 U.S. 186, 217 (1962)).

[68] *Id*. at 965.

[69] *Id.* at 964.

Philadelphia."[70] This was the reasonable relation test in practice: a box-checking operation to determine legislative compliance with a constitutional command that did not consider whether the ultimate aims of the Education Clause were being achieved. Judge Pellegrini, who had presided over the *PARSS* trial but had not yet issued his ruling in that case, dissented in *Marrero I*, opining that "[b]ecause this case involves questions as to whether the General Assembly carried out its constitutional mandates," the matter should be justiciable.[71] The *Marrero I* petitioners appealed the ruling to the Pennsylvania Supreme Court.[72]

While the *Marrero* appeal was pending, Judge Pellegrini issued his decision in *PARSS*.[73] In it, he acknowledged that under the Commonwealth Court's holding in *Marrero I*, PARSS's claim was non-justiciable and dismissed the case.[74] But given that the *Marrero* appeal had yet to be decided, he deemed it expeditious to issue a merits ruling so that the Pennsylvania Supreme Court could deal with all relevant issues, if it chose.[75]

Judge Pellegrini's opinion in *PARSS* combined a robust analysis of the origins of the Education Clause with an acknowledgement of the deep restraints placed upon it by *Danson* and *Marrero I* to give the clause meaning. For example, in a historical review that the Pennsylvania Supreme Court would later draw upon as "exemplary,"[76] *PARSS* extensively examined the terms "thorough and efficient[,]" tracing the phrase from a lecture by Horace Mann in 1840 through its introduction to the constitution during the 1872-73 constitutional Convention.[77] But *PARSS* did not subsequently connect that history—or the text of the constitution—to a cogent standard. Rather, it concluded its survey by remarking that while the historical evidence was "helpful in adding new

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[70] *Id.* at 956.

[71] *Id.* at 967 (Pellegrini, J., dissenting).

[72] Notice of Appeal at 1-2, *Marrero I*, 709 A.2d 956 (Pa. Commw. Ct. 1998) (No. 182 M.D. 1997).

[73] *PARSS*, No. 11 M.D. 1991, 1998 WL 36042843 (Pa. Commw. Ct. July 9, 1998).

[74] *Id.* at *5.

[75] *Id.*

[76] *William Penn II*, 170 A.3d 414, 418 n.6 (Pa. 2017).

[77] *PARSS*, 1998 WL 36042843, at *31-40.

insights," its interpretive value was limited by the fact that "[b]oth this court and our Supreme Court have examined the constitutional history and have already determined the constitutional obligation imposed on the General Assembly by the Education Clause."[78] In other words, *PARSS* was constrained by *Danson* and *Marrero I,*[79] and, so long as that was the case, it could do nothing more than apply the reasonable relation test to the *PARSS* petitioners' claims.[80]

Attempting to do so was no small task. In a tome to judicial restraint, the court noted that "instead of defining specifically the type of education to which each student is entitled, our Supreme Court has taken an ad hoc approach to what 'education' encompasses."[81] The court held that "unless another standard is now applicable, the present educational funding scheme would have survived PARSS's challenge under both the Education Clause and Equal Protection provisions if there was some rational basis for establishing the present educational funding system."[82] The court then explained what *Danson* and *Marrero I*'s reasonable relation test meant in practice: to prevail, PARSS had to show that the present system of funding education produced the result that a substantial number of districts did not have funds to provide a basic or minimal education for their students. Such a system would not have been rationally related to any state interest."[83] Applying this "basic or minimal education" threshold instead of a standard rooted in the court's examination of the clause's constitutional history, and finding that no "witness[] testified that any of their children in their districts were receiving an inadequate education[,]"[84] Judge Pellegrini ruled for the Commonwealth.

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[78] *Id.* at *40.

[79] *Id.* at *44-46.

[80] *Id*. at *46.

[81] *Id*.

[82] *Id.* It appears that the *PARSS* court treated the reasonable relation test and the more familiar rational basis review as interchangeable. *Id.* However, the Pennsylvania Supreme Court has made explicit that "[a]lthough similarly phrased," the reasonable relation test "is not the 'rational relationship test' of equal protection analysis." Reichley v. N. Penn Sch. Dist., 626 A.2d 123, 127 (Pa. 1993).

[83] *PARSS*, 1998 WL 36042843 at *51.

[84] In its appeal to the Pennsylvania Supreme Court, PARSS called that finding "manifestly absurd," because "every witness from the poor school districts

Soon thereafter, the Pennsylvania Supreme Court upheld the Commonwealth Court's ruling in *Marrero*. It relied uncritically and almost exclusively on *Danson* to conclude that adequacy claims under the Education Clause were non-justiciable,[85] or at the very most, that compliance with the Education Clause was satisfied so long as the General Assembly had "enact[ed] a number of statutes relating to the operation and funding of the public school system."[86] On the same day, the Pennsylvania Supreme Court summarily affirmed *PARSS*'s dismissal as non-justiciable.[87]

Together, *Danson* and *Marrero* created a daunting set of hurdles for any litigant seeking to raise an adequacy challenge under the Education Clause. And the Pennsylvania Supreme Court seemed to close the door to equal protection challenges as well. In *Danson*, the majority had summarily dismissed the petitioners' equal protection claim on the basis that "Philadelphia arguably benefits from the operation of the school financing scheme for more sources of taxation are made available to Philadelphia than to any other category of school district."[88] Two justices dissented, arguing that "the right to a public education is constitutionally recognized in Pennsylvania, any state action interfering with that right must be closely examined before it can be said to pass constitutional muster."[89] But in *Marrero II*—despite the fact that petitioners in that case had not asserted an equal protection claim at all—the Pennsylvania Supreme Court took aim at such a claim in dictum, approving of *Marrero I*'s suggestion that the Education Clause did not "confer an individual right upon each student to a particular level

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testified as to the inadequate programs, both educational and cultural, that existed in his or her own school districts," and because the court even adopted nearly two hundred findings "which specifically addressed the inadequacies of the public education system in the poor school districts of Pennsylvania." Brief of PARSS, Pa. Ass'n of Rural & Small Sch. v. Ridge, 1998 WL 34114284 at *84-85 (Pa. Commw. Ct. July 9, 1998) (No. 11 M.D. 1991).

[85] Marrero *ex rel.* Tabalas v. Commonwealth (*Marrero II*), 739 A.2d 110, 113 (Pa. 1999).

[86] *Id.*

[87] Pa. Ass'n of Rural & Small Schs. v. Ridge, 737 A.2d 246 (Pa. 1999).

[88] Danson v. Casey, 399 A.2d 360, 367 (Pa. 1979).

[89] *Id.* at 372 (Manderino, J., dissenting).

or quality of education."[90] The future of Education Clause cases in Pennsylvania was now more dim than ever.

d. Federal Court Avenues are Blocked: Powell v. Ridge

In March 1998, one week after *Marrero* was dismissed by the Commonwealth Court and facing an appeal to a Pennsylvania Supreme Court presumed hostile to school funding litigation, another collection of Philadelphia plaintiffs, similar to the complainants in *Marrero*, filed a race-based disparate impact suit under Title VI of the Civil Rights Act in federal court.[91] *Powell v. Ridge* alleged that, among other things, Pennsylvania's "funding system for education gives school districts with high proportions of white students on average more Commonwealth treasury revenues than school districts with high proportions of non-white students, where the levels of student poverty are the same," and that "school districts with higher proportions of non-white students receive less Commonwealth treasury revenues than districts with higher proportions of white students."[92] After dismissal by the trial court,[93] the Third Circuit reversed, finding sufficient allegations of a disparate impact claim under the regulations of Title VI for the case to proceed.[94] Where Pennsylvania courts were abstaining, it seemed as though federal law might provide some measure of targeted relief for students in underfunded districts.

The *Powell* plaintiffs began to move towards trial, and on April 6, 2001, obtained a favorable decision from the Third Circuit regarding the scope of their ability to conduct discovery against the leaders of the Pennsylvania General Assembly.[95] But hope did not last long. Eighteen days later, the Supreme Court of the United

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[90] *Marrero II*, 739 A.2d at 112. Only four years earlier, the author of the *Marrero I* opinion wrote for the court in another case, stating that "public education in Pennsylvania is a fundamental right." Sch. Dist. of Wilkinsburg v. Wilkinsburg Educ. Ass'n, 667 A.2d 5, 9 (Pa. 1995) (Flaherty, J.).

[91] *See* Powell v. Ridge, 189 F.3d 387 (3d Cir. 1999); Case No. 1998-cv-01223 (E.D. Pa. March 9, 2018).

[92] Powell v. Ridge, 189 F.3d 387, 394 (3d Cir. 1999).

[93] Powell v. Ridge, No. CIV. A. 98-1223, 1998 WL 804727, at *16 (E.D. Pa. Nov. 19, 1998), rev'd, 189 F.3d 387 (3d Cir. 1999).

[94] Powell v. Ridge, 189 F.3d 387, 395 (3d Cir. 1999).

[95] Powell v. Ridge, 247 F.3d 520, 522 (3d Cir. 2001).

States ruled in *Alexander v. Sandoval* that Title VI did not provide a private right of action to enforce its disparate impact regulations.[96] The Third Circuit soon confirmed the limited scope of Title VI—holding that the law "proscribes intentional discrimination only," such that plaintiffs may not bring a suit under the law's disparate impact discrimination regulations[97]—and *Powell's* ability to bring relief fell away. One more door for Pennsylvania school students had closed.

III. THE ONLY WAY OUT IS THROUGH: WILLIAM PENN SCHOOL DISTRICT V. PA. DEPARTMENT OF EDUCATION

In the years after *Marrero II* was decided, a series of legal and factual developments created new potential for another school funding challenge and made clear in stark terms the need for judicial oversight in the first instance. This combination of hope and necessity would eventually result in the first successful school funding challenge in Pennsylvania's history.

a. The Road to William Penn

At the time of the Pennsylvania Supreme Court's rulings in *Danson* and *Marrero*, there was relatively little about the objectives of Pennsylvania's public school system articulated in the Commonwealth's statutory or regulatory schemes.[98] But in the decade that followed, Pennsylvania began to define for itself what constituted an adequate education. For example, through its authority in the Pennsylvania School Code, the State Board of Education adopted a series of regulations "to establish rigorous academic standards and assessments, applicable only to the public schools in this Commonwealth, to facilitate the improvement of student achievement and to provide parents and communities a measure by which school performance can be determined."[99] The

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[96] Alexander v. Sandoval, 532 U.S. 275, 293 (2001).

[97] S. Camden Citizens in Action v. N. J. Dep't of Env't Prot., 274 F.3d 771, 774 (3d Cir. 2001).

[98] *See, e.g.*, 22 PA. CODE § 4.1 (1999) et seq. (state academic standards).

[99] William Penn Sch. Dist. v. Pa. Dep't of Educ., 170 A.3d 414, 426 (quoting 22 PA. CODE § 4.2).

Commonwealth also set out a plan to regularly monitor whether students were learning those standards through a series of state assessments.[100] Next, the Commonwealth commissioned a study to determine the total costs needed for public school children in each school district to meet proficiency on state assessments.[101] That study, which would come to be known as the "Costing-Out Study[,]" found that school funding needed to be increased by $4.38 billion.[102] The following year, the calculation of the so-called "adequacy target[s]" were functionally enacted into state law,[103] with a goal to meet those targets by 2013-2014.[104]

In other words, Pennsylvania had now set standards for what children should learn, created assessments for measuring whether such learning was occurring, and determined how much it would cost to enable children to meet those standards. Arguably then, Pennsylvania courts no longer needed to "define what constitutes an 'adequate' education or what funds are 'adequate' to support such a program" to evaluate challenges under the Education Clause.[105] The General Assembly had already precisely done those things.

And then, worsening conditions in underfunded school districts made another lawsuit all the more urgent. In 2011-2012, the Commonwealth enacted massive education budget cuts that devastated schools across the state.[106] In total, the Commonwealth

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[100] *Id.* at 427.

[101] 24 PA. CONS. STAT. § 25-2599.3 (2006).

[102] AUGENBLICK, PALAICH & ASSOCIATES, COSTING OUT THE RESOURCES NEEDED TO MEET PENNSYLVANIA'S PUBLIC EDUCATION GOALS 51 (2007), https://www.stateboard.education.pa.gov/Documents/Research%20Reports%20and%20Studies/PA%20Costing%20Out%20Study%20rev%2012%2007.pdf.

[103] PA. CONS. STAT. § 25-2502.48 (2007).

[104] Act of July 9, 2008, § 30(c)(2), 2008 Pa. Laws 846, 876. ("In furtherance of the General Assembly's long-standing commitment to providing adequate funding that will ensure equitable State and local investments in public education and in order to enable students to attain applicable Federal and State academic standards, it is the goal of this Commonwealth to review and meet State funding targets by fiscal year 2013-2014.").

[105] Marrero *ex rel* Tabales v. Commonwealth, 709 A.2d 956, 965 (Pa. Commw. Ct. 1998).

[106] *New Study Shows State Cuts to Education Highly Discriminatory*, THE PUB. INT. L. CTR., https://pubintlaw.org/cases-and-projects/new-study-shows-state-cuts-to-education-highly-discriminatory/ (last visited Oct. 5, 2023).

cut nearly one billion dollars for public schools.[107] By one measure, after these budget cuts Pennsylvania became the most regressive state in the nation on school funding.[108] Making matters worse, those budget cuts targeted low-wealth school districts in particular, resulting in draconian measures:

> [T]he School District of Lancaster has eliminated 100 teaching positions and more than twenty administrative positions, substantially increasing the student-teacher ratio throughout the district. Where Lancaster once employed twenty librarians, it now employs five. In 2011 and 2012, Lancaster imposed a hiring and salary freeze for teachers and other staff. Panther Valley School District has struggled similarly since 2011. The number of elementary school and high school teachers has been reduced by 10%. All district librarian positions were eliminated, as were all elementary school technology coach positions. Reductions also have adversely affected Panther Valley's ability to support its growing population of English language-learning students. Greater Johnstown School District, where an unusually high proportion of students have incarcerated, substance-abusing, and/or mentally ill family members, also has labored under the burden of reduced funding. It has eliminated twenty-five teacher positions, and has an insufficient number of administrators, counselors, and librarians, with two librarians serving four schools, resulting in cutbacks to its reading intervention program. The William Penn School District has eliminated fifty-seven teachers, five administrators, and twelve support staff. None of its schools employs a full-time guidance counselor, it has eliminated one librarian

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[107] *Id.*; Thomas Fitzgerald & Angela Couloumbis, *'A Thousand Cuts' and One Big One: How Corbett's Fate was Sealed*, PHILA. INQUIRER (Nov. 4, 2014), https://www.inquirer.com/philly/news/politics/elections/20141105__A_thousand_cuts___and_one_big_one__How_Corbett_s_fate_was_sealed.html.

[108] Emma Brown, *In 23 States, Richer School Districts Get More Local Funding than Poorer Districts*, WASH. POST, (Mar. 12, 2015), https://www.washingtonpost.com/news/local/wp/2015/03/12/in-23-states-richer-school-districts-get-more-local-funding-than-poorer-districts/.

> position, and in 2011 it eliminated all of its reading specialist positions. Due to severe staff reductions, William Penn's former seven-period schedule has been reduced to six periods.[109]

Meanwhile, the General Assembly passed legislation eliminating its statutory goal of meeting adequacy targets,[110] and the Commonwealth stopped calculating them.[111] But in the final year of calculation in 2010-2011, the cumulative adequacy shortfall was dramatic: $4.5 billion.[112]

These developments happened alongside a shift in Pennsylvania jurisprudence. In a series of cases, the Pennsylvania Supreme Court had begun pushing back on the call for judicial abstention through the political question doctrine, invoking the most foundational call for judicial review in American jurisprudence, *Marbury v. Madison*:

> The Court has recognized that it is the province of the Judiciary to determine whether the Constitution or laws of the Commonwealth require or prohibit the performance of certain acts. That our role may not extend to the ultimate carrying out of those acts does not reflect upon our capacity to determine the requirements of the law. This is not a radical proposition in American law.[113]

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[109] William Penn Sch. Dist. v. Pa. Dep't of Educ., 170 A.3d 414, 429-30 (Pa. 2017) (citing Petition for Review allegations).

[110] Act of June 30, 2011, § 34, 2011 Pa. Laws 112, 139.

[111] William Penn Sch. Dist. v. Pa. Dep't of Educ., 294 A.3d 537, 593 (Pa. Commw. Ct. 2023).

[112] *Id.* at 772.

[113] Robinson Twp. v. Commonwealth, 83 A.3d 901, 927 (Pa. 2013) (cleaned up) (citing Marbury v. Madison, 5 U.S. 137, 166 (1803)) ("Where a specific duty is assigned by law [to another branch of government], 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 resort to the laws of his country for a remedy.").; *see also* Hosp. & Health Sys. Ass'n of Pa. v. Commonwealth, 77 A.3d 587 (Pa. 2013); Council 13, AFSCME *ex rel.* Fillman v. Commonwealth, 986 A.2d 63 (Pa. 2009). At the Pennsylvania Supreme Court in *William Penn II*, two amicus briefs laid out in detail this shift in jurisprudence.

Seeing an opportunity to unlock the handcuffs placed by *Danson* and *Marrero* and galvanized by the crisis created by the 2011-2012 budget cuts, six school districts, three families, and two statewide organizations filed *William Penn School District et. al. v. Pennsylvania Department of Education et. al.* in November of 2014.[114]

b. Familiar Allegations and a Familiar Dismissal: William Penn I

While *William Penn* was filed at an extraordinarily perilous moment for Pennsylvania public schools, its allegations were in many ways familiar.[115] Petitioners asserted that the General Assembly, the Governor, and other state officials were failing to distribute sufficient funding to enable school districts to provide a constitutionally adequate education, in dereliction of their duties under the Education Clause.[116] And they asserted that education was a fundamental right, and that children in low-wealth districts were being deprived of that right, with gross disparities between districts that violated the equal protection guarantees of Article III, Section 32.[117] The Petitioners themselves were also familiar: as in *Marrero*, they included Philadelphia families and the NAACP, and one of the parties was PARSS itself.[118]

Those parties were joined by a cross-section of Pennsylvania school districts "spanning the Commonwealth," each alleging a similar story: that the state's failure to provide sufficient education

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See Brief of Amici Curiae Philadelphia Federation of Teachers, Local 3, of the American Federation of Teachers, AFL-CIO, and the American Federation of Teachers Pennsylvania, AFT, AFL-CIO, in Support of Appellants' Appeal, *William Penn II*, 170 A.3d 414 (No. 46 MAP 2015); Brief of Amici Curiae of Law School Professors as Amici Curiae in Support of Appellants, *William Penn II*, 170 A.3d 414 (No. 46 MAP 2015).

[114] Petition for Review in the Nature of an Action for Declaratory & Injunctive Relief ¶¶ 32, 40, *William Penn II*, 170 A.3d 414 (No. 587 M.D. 2014).

[115] *William Penn II*, 170 A.3d at 417-18.

[116] *Id.* at 425.

[117] *Id.* at 431-32.

[118] Petition for Review in the Nature of an Action for Declaratory & Injunctive Relief ¶¶ 32, 40, *William Penn II*, 170 A.3d 414 (No. 587 M.D. 2014); *William Penn II*, 170 A.3d at 425.

funding was depriving their students of the core elements of a constitutionally compliant education.[119]

Facing inevitable preliminary objections in the Commonwealth Court on justiciability grounds, Petitioners did not attempt to overturn *Danson* and *Marrero*. Instead, they sought to set those cases aside, arguing that in the facts presented by *William Penn*, the Commonwealth had already "defined the content of the public education system and the level of proficiency that the individual students must attain in order to meet the requirements of the Education Clause."[120] Accordingly, Petitioners argued, the court could find that the Commonwealth had failed its "constitutional duties by failing to provide sufficient resources to meet those standards because the current funding levels are irrational, arbitrary and not reasonably calculated to ensure that all students are provided with the required course of study or services or obtain the required proficiency in the subject areas."[121]

In support of their equal protection claim, Petitioners asserted that "education is a fundamental right of every student and imposes a duty on Respondents to ensure that every student is treated equally and has the same fundamental opportunity to meet academic standards and obtain an adequate education[.]"[122] And Petitioners alleged that the Commonwealth was violating "the Equal Protection Clause by adopting a school funding program that discriminates against the identifiable class of students living in low-income and low-property value districts and denying them an equal opportunity to obtain an adequate education."[123]

The Commonwealth Court, nevertheless, dismissed the case, unanimously holding that both claims were non-justiciable.[124] In rejecting Petitioners' Education Clause claim, the court, once again, relied exclusively on *Danson* and *Marrero*. The court concluded that "the adoption of statewide academic standards and assessments and the costing-out study and subsequent appropriations since the

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[119] *William Penn II*, 170 A.3d at 425.

[120] William Penn Sch. Dist. v. Pennsylvania Dep't of Educ., 114 A.3d 456, 458-59 (Pa. Commw. Ct. 2015).

[121] *Id.* at 459.

[122] *Id.* at 460.

[123] *Id.*

[124] *Id.* at 464.

Pennsylvania Supreme Court's decision in *Marrero II* do not preclude its application in this case[,]" and that the court still lacked "judicially manageable standards for determining whether the General Assembly has discharged its duty" under the Education Clause.[125] The Commonwealth Court also cited *Marrero II* as the basis for dismissing Petitioners' equal protection claim, repeating the Pennsylvania Supreme Court's dictum that "the Constitution 'does not confer an individual right upon each student to a particular level or quality of education,' and 'expenditures are not the exclusive yardstick of educational quality, or even constitutional quantity.' "[126] Ultimately, the Commonwealth Court did not treat the two claims asserted by Petitioners as distinct. Each collapsed into the court's assumption that:

> This Court can no more determine what level of annual funding would be sufficient for each student in each district in the statewide system to achieve the required proficiencies than the Supreme Court was able to determine what constitutes an "adequate" education or what level of funding would be "adequate" for each student in such a system in *Marrero II* or *Danson.*[127]

Accordingly, the Commonwealth Court held that Petitioners' case presented "a legislative policy determination that has been solely committed to the General Assembly under Article 3, Section 14."[128] Petitioners appealed to the Pennsylvania Supreme Court.

c. The Pennsylvania Supreme Court Opens the Courthouse Doors: William Penn II

In a scholarly decision that touched on everything from the history of the Education Clause, to detailed surveys of other states' school funding cases, to the standards-based education reform movement, the Pennsylvania Supreme Court reversed.

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[125] *Id.* at 463.

[126] *William Penn I*, 114 A.3d at 463 (alteration in original) (quoting *Marrero II*, 739 A.2d at 112-13).

[127] *Id.*

[128] *Id*. at 463-64.

i. The Court Holds Education Clause Claims are Justiciable

The Pennsylvania Supreme Court began with a review of the Commonwealth Court's conclusion that Petitioners' Education Clause claim was non-justiciable, attempting to unpack the precedent that undergirded *William Penn I*. But the court ultimately concluded that such a task could not be accomplished, calling the *Teachers' Tenure Act Cases*, *Danson* and *Marrero* "an unstable three-legged stool."[129] It spared no descriptor, calling *Danson* "a case that defies confident interpretation," with "little developed reasoning," with an "absence of reasoned analysis," various "internal tensions," "manifestly debatable premises," and an overall "imprecise approach[.]"[130] The court similarly described *Marrero I* and *Marrero II* as guided by "dubious" logic and "suffer[ing] from the same faults" as *Danson*, which the decisions had "adopted . . . wholesale, warts and all."[131]

In particular, the Pennsylvania Supreme Court expressed bewilderment over the cases' "simultaneous[] and irreconcilable[]" treatment of the "reasonable relation test" and "the political question doctrine."[132] In the end, the court concluded that there was "precisely . . . one unequivocal proposition that may reasonably be inferred from the *Teachers' Tenure Act Cases*, *Danson*, and *Marrero II*[:]" that the Education Clause provides "legislative freedom to experiment with education policy in response to changing needs and innovations."[133]

As a result, the Pennsylvania Supreme Court declined to salvage its old precedent—it did not attempt to harmonize the cases or consider whether *William Penn* was distinguishable from them. Rather, "find[ing] irreconcilable deficiencies in the rigor, clarity, and consistency of the line of cases that culminated in *Marrero II*[,]" it held that "[w]hen presented with a case that hinges upon our interpretation and application of prior case law, the validity of that

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[129] *William Penn II*, 170 A.3d at 445.
[130] *Id.* at 441, 443, 444, 445.
[131] *Id.* at 445, 449, 458.
[132] *Id.* at 437.
[133] *Id.* at 448.

case law always is subject to consideration[,]" and effectively swept *Danson* and *Marrero II* away.[134]

With those cases in the rearview mirror, the court returned to first principles, analyzing whether Petitioners' Education Clause claim was justiciable pursuant to Pennsylvania's political question doctrine.[135] At issue before the court in *William Penn II* was whether court abstention was required as a result of three "closely interrelated" factors: "a textually demonstrable commitment [of education] to the General Assembly, a lack of judicially discoverable and manageable standards, and an inability to decide the question without an initial policy determination not appropriate for judicial discretion."[136]

The court began with the contention that education was "textually committed" to the legislature, because the Education Clause imposes the duty to maintain and support the system of schools on the General Assembly.[137] But the court made plain that under Pennsylvania law, the "mere textual commitment of a given function to a given branch of government does not by itself preclude judicial review."[138] Instead, "there must be some indication" of an "obligation and prerogative to 'self-monitor.' "[139] Noting that the 1874 constitution was adopted in a time of intense distrust of the General Assembly, the court found no indication that the framers intended "the legislature's efforts" to fulfill its duties under the

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[134] *Id.* at 457.

[135] *E.g.*, Robinson Twp. v. Commonwealth., 83 A.3d 901, 928 (Pa. 2013) ("Cases implicating the political question doctrine include those in which: there is a textually demonstrable constitutional commitment of the disputed issue to a coordinate political department; there is a lack of judicially discoverable and manageable standards for resolving the disputed issue; the issue cannot be decided without an initial policy determination of a kind clearly for non-judicial discretion; a court cannot undertake independent resolution without expressing lack of the respect due coordinate branches of government; there is an unusual need for unquestioning adherence to a political decision already made; and there is potential for embarrassment from multifarious pronouncements by various departments on one question.").

[136] *William Penn II*, 170 A.3d at 445-46.

[137] *Id.* at 446.

[138] *Id.*

[139] *Id.*

clause to "be graded exclusively by that body without judicial recourse."[140]

The court next rejected the twin propositions that it was impossible to create judicially manageable standards to evaluate educational adequacy or that doing so required policy judgments reserved to the legislature. While acknowledging that "creating a practicable standard by which courts might define and measure the thoroughness and efficiency of a given statutory educational scheme" was a "formidable challenge[,]" the court pointed to other jurisdictions around the nation that had successfully "develop[ed] a broad, flexible judicial standard for assessing legislative fulfillment of a constitutional mandate to furnish public education while remaining sensitive to the legislature's sole prerogative to negotiate the particular policies that will satisfy it."[141] The court also set aside the idea that the difficulty of such a task might itself justify abstention: "the clear majority of state courts . . . have held it their judicial duty to construe interpretation-begging state education clauses like ours to ensure legislative compliance with their constitutional mandates, no matter the difficulties invited or, in many cases, confronted."[142]

The court further dismissed the contention that interpreting the Education Clause's "mandate and the minimum that it requires" was tantamount to "legislative policy-making[,]" noting with approval other courts' "capacity to differentiate a constitutional threshold, which ultimately is ours to determine, from the particular policy needs of a given moment, which lie within the General Assembly's purview."[143] Ultimately, the court reasoned, "[i]t is fair neither to the people of the Commonwealth nor to the General Assembly itself to expect that body to police its own fulfillment of its constitutional mandate."[144]

In determining that Petitioners' adequacy claim under the Education Clause was justiciable, the court also rejected the use of

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[140] *Id.*

[141] *Id.* at 450-51.

[142] William Penn Sch. Dist. v. Pa. Dep't. of Educ., 170 A.3d 414, 463 (Pa. 2017).

[143] *Id.* at 463.

[144] *Id.* at 464.

the reasonable relation test to evaluate such claims. In a clear reference to *Danson*'s and *Marrero*'s legacy—which rendered adequacy claims simultaneously non-justiciable *and* subject to a fatally deferential standard of review—the court denounced both bases for avoiding judicial review:

> To the extent that our prior cases have suggested, if murkily, that a court cannot devise a judicially discoverable and manageable standard for Education Clause compliance that does not entail making a policy determination inappropriate for judicial discretion, *or* that we may only deploy a rubber stamp in a hollow mockery of judicial review, we underscore that we are not bound to follow precedent when it cannot bear scrutiny, either on its own terms or in light of subsequent developments.[145]

Leaving the parameters of the actual standard for another time and another judge,[146] the court reversed the Commonwealth Court's dismissal of Petitioners' Education Clause claim.[147]

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[145] *Id.* at 456 (emphasis added). In dissent, Chief Justice Saylor argued that the case was non-justiciable, but he also agreed that the reasonable relation test had no place in challenges alleging the sufficiency of action under the Education Clause. *Id.* at 486 (Saylor, C.J., dissenting).

[146] Other than providing the guideposts discussed, See *infra* Part III.c.iii, the court repeatedly declined to engage in an inquiry of what the proper standard should be, stressing that the question before it "is not *what* standard a court might employ in assessing the General Assembly's satisfaction of its mandate, but whether *any* conceivable judicially enforceable standard might be formulated and applied after the development of an adequate record consisting of an array of proposals as to how a court might fairly assess thoroughness and efficiency." *William Penn II*, 170 A.3d at 450 (emphasis in original). In that context, however, it noted that the Commonwealth itself had developed various rubrics defining the standards, goals, and purposes of its system of education that could be used to "fashion a constitutionalized account . . . and measure the state of public education against that rubric." *Id.* at 453 (citing 22 PA. CODE § 4.11). And it rejected endorsing "whatever standards the General Assembly relies upon at a moment in time" to set the constitutional minimum, "because at that point, our oversight function would be merely symbolic." *Id.* at 450.

[147] *William Penn II,* 170 A.3d at 464.

ii. The Court Indicates a Right to Education May Exist After All

The court also disagreed with the Commonwealth Court's "conclusory rejection" of Petitioners' Article III, Section 32 claim, observing that, like *Danson*, *William Penn I* had "uncritically linked" the equal protection claim to the Education Clause arguments.[148] Indeed, the court noted that "the Commonwealth Court's disposition of the equal protection claim in the instant case depends so completely upon the outcome of the Education Clause claim that we could simply remand with direction that it consider that issue in light of our ruling with regard to the Education Clause."[149]

However, the court went on to explain why it was error to conflate the two claims, pointing to the fact that "[d]espite some inevitable degree of overlap," Petitioners' equal protection claim was driven by "the manner of distribution, not the quantum of financial resources distributed[.]"[150] And the court determined that the equal protection claim was independently justiciable, observing that like the Education Clause, nothing in Article III, Section 32 "textually repose[s] in the General Assembly the authority to self-monitor and self-validate its compliance with that provision[.]"[151] Moreover, the court noted that the familiar "rational basis/heightened scrutiny/strict scrutiny rubric that applies to equal protection claims is, by its very nature, a judicially discoverable and manageable standard, and one that does not require a policy determination that properly belongs to the legislature."[152]

The court also made plain that despite "mixed signals" from past cases, "whether the Pennsylvania Constitution confers an individual right to education—and, if so, of what sort" was not a settled question.[153] And although the court declined to address those questions, deeming them "outside the ambit of the justiciability question[,]" it did note that unlike the United States Constitution,

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[148] *Id.* at 458.
[149] *Id.*
[150] *Id.* at 458-59.
[151] *Id.* at 460.
[152] *Id*.
[153] *William Penn II,* 170 A.3d at 461-62.

whose "conspicuous and complete silence" on the topic of education led the Supreme Court of the United States to determine there is no federal right to education, the Pennsylvania Constitution "is not at all silent on the topic[,]" giving the very mandate to a "thorough and efficient" education in Article III, Section 14.[154]

iii. The Court Provides Guideposts on Remand

Dispensing with the precedent of *Danson* and *Marrero*, the Pennsylvania Supreme Court remanded to the Commonwealth Court.[155] And while it left significant work for that court, it also created several guideposts that would shape the case to come.

1. The Education Clause's Origins and its Obligation to Provide an Education of "Specified Quality"

In its opinion, the Pennsylvania Supreme Court made clear that the Education Clause was "a constitutional mandate to furnish education of a specified quality,"[156] and indicated that in order to understand the nature of that quality, the Commonwealth Court would need "to develop the historic record concerning what, precisely, thoroughness and efficiency were intended to entail[.]"[157] The court held that "the most sensible approach" was to ground this inquiry not in the deferential, box-checking legacy of *Danson* and *Marrero*, but in the history of the constitution itself.[158]

The question then became: what history? As discussed *supra*, the central features of today's Education Clause—including its mandate on the General Assembly to maintain and support a thorough and efficient system of education—became a part of the Pennsylvania Constitution in 1874.[159] However, in 1967 the clause was revised as part of an effort to modernize the constitution.[160] Accordingly, one question that the Commonwealth Court would

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[154] *Id.* at 460 (referencing San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973)).

[155] *Id*. at 458.

[156] *Id*. at 457.

[157] *Id.*

[158] *Id.* at 450.

[159] *See supra* Part I.

[160] *William Penn II*, 170 A.3d at 425.

face was whether, and to what extent, the history of the 1874 constitution mattered in light of the 1967 amendments.

The Pennsylvania Supreme Court made plain that the 1874 Education Clause's history, including the convention debates that led up to the clause's ratification, were critical to understanding the import of today's clause, asserting that "the language upon which the instant case primarily hinges first appeared in our Constitution in 1874[.]"[161] The court also relied heavily on this time period in the clause's history in its own analysis of the clause, basing its finding that the Education Clause did not "textually commit" education to the legislature on the fact that "[t]his Court previously has observed that the 1874 Constitution 'was drafted in an atmosphere of extreme distrust of the legislative body and of fear of the growing power of corporations,' and reflected a 'prevailing mood . . . of reform.' "[162] The court's reliance on the 1874 history was a clear directive to the Commonwealth Court that would soon be tasked with giving the clause "meaning and force."[163]

2. Local Control and the General Assembly's Exclusive Obligation Under the Education Clause

In *Danson*, the Pennsylvania Supreme Court had suggested that even gross inadequacies and inequities in school funding could be justified by the need to preserve local control of public education.[164] Anticipating similar arguments that were sure to come, the Pennsylvania Supreme Court in *William Penn II* took this claim head on, noting that "[t]he relationship of school funding and local control is often cited by defenders of hybrid school funding schemes that result in significant district-by-district disparities."[165] And the court rejected the argument in the clearest possible terms, calling it "tendentious," condemning it as "typically conclusory in its

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[161] *Id.*

[162] *Id.* at 423-25; *see also id.* at 423 n.13 (cleaned up) (citations omitted).

[163] *Id.* at 457.

[164] *Danson*, 399 A.2d at 367; *see also* San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 49 (1973).

[165] *William Penn II*, 170 A.3d at 442 n.40.

presentation," and emphasizing that school funding disparities actually *harm* local control in practice.[166]

Even setting the logic of the justification aside, the Pennsylvania Supreme Court was firm that "recitations of the need for local control cannot relieve the General Assembly of its exclusive obligation under the Education Clause."[167] In other words, as another state's highest court held, legislatures "may delegate, but they may not abdicate, their constitutional duty."[168] The Pennsylvania Supreme Court was clear that if schoolchildren were not receiving the education the constitution demands as a result of "the limitations inherent in local control and funding . . . 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."[169]

3. The Primacy of Education

School funding cases are, at their core, about *funding*. And the Commonwealth funds many things, from roads to racehorses,[170] each of which has some claim to importance. In *William Penn II*, the Pennsylvania Supreme Court acknowledged that there are certainly "many competing and not infrequently incompatible

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[166] *Id*.

[167] *Id.*

[168] McDuffy v. Sec'y of Exec. Off. of Educ., 615 N.E.2d 516, 550 (Mass. 1993); *see also* DeRolph v. State, 677 N.E.2d 733, 745 (Ohio 1997); Campbell Cnty Sch. Dist. v. State, 907 P.2d 1238, 1270 (Wyo. 1995); Tenn. Small Sch. Sys. v. McWherter, 851 S.W.2d 139, 154-55 (Tenn. 1993).

[169] *William Penn II*, 170 A.3d at 442 n.40. Many courts around the country agree on this point as well. *See, e.g.*, Campaign for Fiscal Equity, Inc. v. State, 801 N.E.2d 326, 343 (N.Y. 2003) ("[T]he State remains responsible when the failures of its agents sabotage the measures by which it secures for its citizens their constitutionally-mandated rights."); Rose v. Council for Better Educ., Inc., 790 S.W.2d 186, 211 (Ky. 1989) ("The sole responsibility for providing the system of common schools is that of our General Assembly."); Robinson v. Cahill, 303 A.2d 273, 294 (N.J. 1973) ("Whether the State acts directly or imposes the role upon local government, the end product must be what the constitution commands. A system of instruction in any district of the State, which is not thorough and efficient, falls short of the constitutional command . . . . [T]he obligation is the State's to rectify it.").

[170] 4 PA. CONS. STAT. § 1405 (2017).

demands our legislators 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."[171] But the court went on to stress that few financial obligations are mandated by the constitution itself, and it explicitly rejected the suggestion that roads, horses, or any other non-constitutional concerns could be on equal footing with education:

> Judicial oversight must be commensurate with the priority reflected in the fact that for centuries our charter has featured some form of educational mandate. Otherwise, it is all but inevitable that the obligation to support and maintain a "thorough and efficient system of public education" will jostle on equal terms with non-constitutional considerations that the people deemed unworthy of embodying in their Constitution. *We cannot avoid our responsibility to monitor the General Assembly's efforts in service of its mandate and to measure those effects against the constitutional imperative, ensuring that non-constitutional considerations never prevail over that mandate*.[172]

In other words, as the court put it in a different case, "financial burden is of no moment when it is weighed against a constitutional right."[173] The Education Clause creates a mandate for the General Assembly, and they must meet it: "financial concerns [can] not in any way dilute the [General Assembly's] primary responsibility to maintain 'a thorough and efficient system of public schools.'"[174]

4. Mootness

Finally, the court rejected the implicit suggestion that the change in the state's funding formula that occurred subsequent to

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[171] *William Penn II*, 170 A.3d at 464.

[172] *Id.* (emphasis added).

[173] Blum v. Merrell Dow Pharm. Inc., 626 A.2d 537, 548 (Pa. 1993).

[174] Sch. Dist. of Phila. v. Twer, 447 A.2d 222, 224 (Pa. 1982) (quoting PA. CONST. art. III, § 14).

the initiation of *William Penn* in 2014 could render the case moot.[175] The court first found that the case was not moot.[176] But even if the claims had been "technically . . . mooted by the passage" of the new funding law, the court noted that "the public importance" of the case "cannot be disputed."[177] Accordingly, the court held that any future mootness attempt should likely be rejected, because "Petitioners would have a compelling argument . . . to proceed to decision on the basis that the issues as stated are of importance to the public interest and 'capable of repetition yet evading review.' "[178] In a case that would last for eight years, such a holding would become critically important for the Petitioner families in the case.

d. Making the Constitutional Promise a Reality: William Penn III

Upon remand to the Commonwealth Court, *William Penn* began to wend its way toward trial. Respondents sought dismissal yet again, filing an Application to Dismiss for Mootness and submitting supplemental briefing on their remaining preliminary objections, which included failure to state a claim, sovereign immunity, and separation of powers.[179] But largely relying on the Pennsylvania Supreme Court's decision, the Commonwealth Court ultimately rejected all of those arguments, and the case was assigned to Judge Renee Cohn Jubelirer.[180]

Over the course of the next three years—and through the beginning of the COVID-19 pandemic—the parties proceeded

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[175] *William Penn II*, 170 A.3d at 435.

[176] *Id.*

[177] *Id.* at 435 n.34.

[178] *Id.* (quoting Commonwealth v. Cromwell, 32 A.3d 639, 652 (Pa. 2011)).

[179] *See* Brief in Support Of Application In The Nature Of A Motion to Dismiss For Mootness at 9-15, William Penn Sch. Dist. v. Pa. Dep't of Educ. (No. 587 M.D. 2014); Supplemental Brief Of Senator Scarnati In Support Of Preliminary Objections at 8-17, William Penn Sch. Dist. v. Pa. Dep't of Educ. (No. 587 M.D. 2014); Speaker Turzai's Supplemental Brief In Support Of Preliminary Objections at 11-14, William Penn Sch. Dist. v. Pa. Dep't of Educ. (No. 587 M.D. 2014).

[180] *See* William Penn Sch. Dist. v. Pa. Dep't of Educ., No. 587 M.D. 2014, 2018 LEXIS 249, at *4-11 (Pa. Commw. Ct. May 7, 2018); Memorandum Opinion By Judge Cohn Jubelirer at 2, William Penn Sch. Dist. v. Pa. Dep't of Educ. (No. 587 M.D. 2014).

through discovery and then pretrial motions, during which the court, among other things, considered and partially rejected sweeping claims of legislative privilege;[181] rejected mootness-based summary judgment claims against individual Petitioners, relying upon the Pennsylvania Supreme Court's own mootness holding that the "matter involves an issue of great public importance";[182] and denied Legislative Respondents' attempt to "preclude Petitioners from presenting evidence of the disproportionate impact" of the school funding system "on racial and/or ethnic minorities," including evidence "such as spending or achievement gaps."[183] The court also rejected Respondents' claim that Petitioners' should be precluded from presenting evidence of deficiencies that post-dated the 2014 complaint,[184] but ordered the parties to update certain categories of discovery to ensure the record would be complete.[185]

The trial finally began in November 2021. Before the court to resolve were a broad range of questions of fact and law. Pursuant to the road map laid out in *William Penn II*, the court would have to "give meaning and force" to the Education Clause for the first time, analyzing the clause's plain language and historical underpinnings to understand "what, precisely, thoroughness and efficiency were intended to entail."[186] The court would then have to devise "a broad, flexible judicial standard for assessing legislative fulfillment of [the Clause's] constitutional mandate" and use that standard to evaluate the current school funding scheme.[187] The court also had to resolve the "unsettled question" of whether the Education Clause confers a right to education as well as the nature of that right.[188] And in order to address all these issues, the court first needed to "develop a record

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[181] William Penn Sch. Dist. v. Pa. Dep't of Educ., 243 A.3d 252, 273 (Pa. Commw. Ct. 2020).

[182] William Penn Sch. Dist. v. Pa. Dep't of Educ., No. 587 M.D. 2014, 2021 WL 11472636, at *6 (Pa. Commw. Ct. Mar. 8, 2021).

[183] William Penn Sch. Dist. v. Pa. Dep't of Educ., No. 587 M.D. 2014, 2021 WL 11472623, at *8 (Pa. Commw. Ct. July 28, 2021).

[184] William Penn Sch. Dist. v. Pa. Dep't of Educ., No. 587 M.D. 2014, 2021 WL 11472624, at *8 (Pa. Commw. Ct. July 23, 2021).

[185] William Penn Sch. Dist. v. Pa. Dep't of Educ., No. 587 M.D. 2014 (Pa. Commw. Ct. Aug. 11, 2021) (order granting motion *in limine* in part).

[186] *William Penn II*, 170 A.3d 414, 457 (Pa. 2017).

[187] *Id.* at 450-51.

[188] *See id*. at 461.

enabling assessment of the adequacy of the current funding scheme relative to any particular account of the Constitution's meaning."[189]

i. The Commonwealth Court Sets out to Develop an Evidentiary Record

In a forty-nine-day trial in Harrisburg, the Commonwealth Court heard testimony from forty-one witnesses, including educators, public officials, experts, a constitutional historian, and a former student. Petitioners presented testimony from Professor Derek Black, a constitutional history scholar at the University of South Carolina Joseph F. Rice School of Law with an expertise in state education clauses, to provide insight into the circumstances that surrounded the creation of the Pennsylvania Education Clause and the historical meaning of the words that were ultimately enshrined in the constitution.[190] Dr. Matthew Kelly, an educational finance expert and professor at Penn State University, used the state's own measures to provide the court with a comprehensive analysis of the ways in which Pennsylvania's school funding scheme creates systemic inadequacies and inequities in low-wealth school districts, using statewide data to trace the interplay between demographics, wealth, funding, expenditures, adequacy shortfalls, needs, and outcomes of all 499 of the Commonwealth's school districts.[191] Petitioners also took testimony from Pennsylvania's top education officials,[192] all of whom generally admitted that the Commonwealth's current public education system suffered from wide resource disparities and persistent achievement gaps, and all of whom acknowledged that the root cause of those gaps was underfunding.[193] And PARSS, the NAACP, and over a dozen school district witnesses testified to the ways in which these structural funding deficiencies impaired low-wealth school districts'

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[189] *Id.* at 457.

[190] *See William Penn III*, 294 A.3d 537, ¶¶ 1859-1869 (Pa. Commw. Ct. 2023) (finding of fact made by court).

[191] *See id.* ¶¶ 1871-1945, at 767-82 (finding of fact made by court).

[192] This included the Executive Director of the State Board of Education, the Secretary of Education, two Deputy Secretaries, and a Division Chief. *Id.* ¶ 399, at 598-99 (finding of fact made by court).

[193] *See, e.g.*, *id.* ¶ 2231, at 854 (finding of fact made by court).

ability to provide a quality education to students, and the devastating impact of those inadequacies on students' outcomes.[194]

In order to prove that Pennsylvania's current system of public education was irrationally, inadequately, and inequitably funded, Petitioners set out to establish the fundamental premises underlying that claim: that all children can learn, including students living in poverty, students learning English, and students with disabilities; that some children need more resources to access their education than others; and that when sufficient resources are deployed, student outcomes improve.[195] Education officials, teachers and superintendents all described their experiences watching students from all backgrounds learn and succeed when they were provided with the educational supports they needed.[196] These first-hand accounts were buttressed by expert testimony from education policy scholars and economists demonstrating the significant, positive connections between funding, educational resources, and student achievement.[197]

Legislative Respondents presented rebuttal witnesses in an effort to challenge the connection between funding and student achievement, including through the expert testimony of Dr. Eric Hanushek, a long-standing defense witness in school funding cases, known for research that allegedly found no connection between funding and outcomes.[198] Respondents also attempted to dispute the validity of the state's own standardized assessments as a valid metric

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[194] *See id.* ¶¶ 471-1730, 1853-1858 (finding of fact made by court).

[195] *See* Petitioners' Proposed Findings of Fact and Conclusions of Law §§ III(B*), William Penn III*, 294 A.3d 537 (No. 587 M.D. 2014).

[196] *E.g.*, *William Penn III*, 294 A.3d ¶¶ 471-1730 (finding of fact made by court).

[197] *E.g., id.* at 800-10 (discussing Dr. Rucker Johnson's expert testimony); *Id.* at 787-94 (discussing Dr. Pedro Noguera's expert testimony); *Id.* at 782-87 (discussing Dr. Steven Barnett's expert testimony); *Id*. at 794-800 (discussing Dr. Clive Belfield's expert testimony).

[198] Transcript of Proceedings Testimony at 14142, *William Penn III*, 294 A.3d 537 (No. 587 M.D. 2014). After trial, Dr. Hanushek would subsequently retract much of that position. *See* Matt Barnum, *An economist spent decades saying money wouldn't help schools. Now his research suggests otherwise*, CHALKBEAT (May 16, 2023), https://www.chalkbeat.org/2023/5/16/23724474/school-funding-research-studies-hanushek-does-money-matter.

of student success, and to elevate instead the state's attempts to measure relative progress.[199] And on cross-examination of Petitioners' district witnesses, Respondents sought to elicit testimony establishing that low-wealth school districts had adequate resources, and that to the extent there were any deficiencies, they were the result of districts' choices to spend money in certain ways,[200] or the inevitable outcome of "out-of-school factors," including poverty, parental involvement, and intrinsic motivation.[201]

By closing arguments on March 10, 2022,[202] two very different views of the case had emerged. Petitioners asserted that a system of education in which the evidence indisputably demonstrated that "[l]ow wealth districts do not have the resources that they need to prepare all children for college, career and civic success" was neither thorough nor efficient, in clear violation of the Education Clause's mandate.[203] Legislative Respondents, adopting a position that echoed their prior non-justiciability claims, countered that "much of the differences of opinion that the Court has heard at trial are, in the end, public policy disagreements of the type that must

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[199] *William Penn III*, 294 A.3d at 810-13 (discussing Dr. Christine Rossell's expert testimony); *Id*. at 831-36 (discussing Dr. Abel Koury's expert testimony).

[200] Transcript of Proceedings Testimony, *supra* note 198 at 3262-64 (cross-examining Greater Johnstown superintendent about a decision to replace stadium lights); *Id.* at 5341-45 (cross-examining Lancaster superintendent about decision to purchase iPads instead of Chromebooks).

[201] *See id.* (cross-examining the superintendent of William Penn about the "many out-of-school factors that can influence how well students do, including personal, family or economic circumstances"); *Id*. at 3806-08 (cross-examining the superintendent of Shenandoah Valley about "whether more money for a district can succeed in compensating for the lack of a supportive family environment"); *Id.* at 10891 (cross-examining the superintendent of Wilkes-Barre about whether "[i]f the student has a lack of food or a lack of clothing, do you believe it's the district's responsibility to try to remedy those situations?"). *See also id*. at 127 arguing that "[s]chool achievement can be influenced by many factors that are outside the control of the public school system, things like parental involvement, good nutrition and good healthcare, adequate housing, a safe environment and, of course, factors unique to the individual student, such as his or her own natural intelligence, work ethic, and interest in school.").

[202] *See* Transcript of Proceedings Closing Arguments at 14685, *William Penn III*, 294 A.3d 537 (No. 587 M.D. 2014).

[203] *Id.* at 14721 (Petitioners' closing).

be resolved through the political process."[204] Additionally, the Legislative Respondents argued that:

> [T]his Court cannot interfere and should not interfere with the manner in which the General Assembly has chosen to fulfill its duty of providing for the maintenance and support of a thorough and efficient system of public education unless Petitioners have clearly and convincingly proven a constitutional violation, which they have not done.[205]

Throughout the summer of 2022, the parties briefed and argued the legal issues that undergirded the court's assessment of the factual record.[206] By July of 2022, a vast record had been amassed: nearly 15,000 pages of trial transcript,[207] 1,696 admitted exhibits,[208] 1,100

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[204] *Id.* at 15061 (Speaker Cutler's closing).

[205] *Id*. at 15084-85.

[206] At the Commonwealth Court in 2015, and again before the Pennsylvania Supreme Court in 2016, the Executive Respondents—Governor Tom Wolf, the Pennsylvania Department of Education, the Secretary of Education, and the State Board of Education—argued that the case was barred by *Danson* and *Marrero*. *See* William Penn Sch. Dist. v. Pennsylvania Dep't of Educ. (*William Penn I*), 114 A.3d 456, 461-64 (Pa. Commw. Ct. 2015); William Penn Sch. Dist. v. Pennsylvania Dep't of Educ. (*William Penn II*), 170 A.3d 414, 432-34 (Pa. 2017). By trial, the position of the Governor, the Secretary, and the Department of Education had shifted to a role they described as "assisting the Court in understanding the statutory, regulatory and policy rationales that frame Pennsylvania's public education system." Transcript of Proceedings Opening Statements at 64, *William Penn III*, 294 A.3d 537 (No. 587 M.D. 2014). The State Board, meanwhile, said little, except to note that its positions were outlined in its Master Plan for Basic Education, and that the court should keep "the focus of our collective efforts on the students who look to us for their education and guidance." *Id*. at 99-100. Accordingly, this article focuses on the Respondents who most strongly defended the system: the Legislative Respondents, represented by then-Speaker of the House Bryan Cutler and President Pro Tempore of the Senate Jake Corman.

[207] *William Penn III*, 294 A.3d at 546; Transcript of Proceedings Closing Arguments, *supra* note 202 at 15099.

[208] *Id.;* The Unified Judicial System of Pennsylvania, Master Exhibit List, William Penn Sch. Dist. v. Pa. Dep't of Educ., 294 A.3d 537 (Pa. Commw. Ct. 2023) (No. 587 M.D. 2014),

pages of proposed findings of fact and conclusions of law,[209] 400 pages of post-trial briefing,[210] and hours of oral argument were now ready for the court's consideration.[211]

ii. The Commonwealth Court's Historic Ruling

On February 7, 2023, a little over six months after the parties' final oral argument had concluded, President Judge Cohn Jubelirer issued a 778-page memorandum opinion, ruling in favor of Petitioners.[212]

The opinion began with 2,286 detailed findings of fact, more than 1,200 of which credited the testimony of school administrators, educators, and families,[213] demonstrating that their communities were "low-wealth, high-need, high-effort, low-spending district[s]," and describing the various ways the system was failing their communities, including by requiring schools to deprive children of the resources educators know their students need.[214] In one of its findings, the court cited a superintendent's testimony at length as an example of the difficult decisions the district must make:[215]

> The philosophical dilemma in this is that what about the students in red? If we don't — if we don't provide

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https://ujsportal.pacourts.us/Report/PacDocketSheet?docketNumber=587%20MD%202014&dnh=LGOdxHdJN8RiveeZcDZdiA%3D%3D.

[209] Petitioners' Proposed Findings of Fact and Conclusions of Law, *supra* note 195, at 497.

[210] Senator Jake Corman Post-Trial Brief at 126, *William Penn III*, 294 A.3d 537 (No. 587 M.D. 2014) [hereinafter PPT Brief]; Petitioners' Post-Trial Brief at 86, *William Penn III*, 294 A.3d 537 (No. 587 M.D. 2014) [hereinafter Petitioners' Brief]; Executive Respondents' Post-Trial Brief at 152, *William Penn III*, 294 A.3d 537 (No. 587 M.D. 2014); Post-Trial Brief of State Bd. of Educ. at 28, *William Penn III*, 294 A.3d 537 (No. 587 M.D. 2014).

[211] Transcript of Proceedings Oral Argument at 1, *William Penn III*, 294 A.3d 537 (No. 587 M.D. 2014).

[212] *William Penn III*, 294 A.3d 537.

[213] *See, e.g.*, *id.* ¶¶ 471, 616, 811, 1036, 1154, 1313 (findings of fact made by court that Petitioner witnesses' testimony was credible).

[214] *E.g.*, *id.* ¶ 823, at 649 (finding of fact made by court).

[215] *Id.* ¶ 615, at 625 (finding of fact made by court).

> intervention and support to those students, they continue to fall further and further behind.
>
> So, you know, and I can tell you that that is not, by design, the way education should be. We, as superintendents across the Commonwealth, shouldn't have to make those very awful decisions about who are the kids that get the resources this year. And so, you know, when we talk about the bubble kids, it requires less — less intervention, but we know if we focus on those kids, the children in red are left further and further behind.[216]

The court's opinion also spanned 150 pages of legal analysis addressing each question of law raised by the parties, including "multiple issues of first impression."[217] Aided by the guideposts announced in *William Penn II* and an exhaustive study of other states' school funding cases, the court answered the novel questions before it using fundamental principles of legal interpretation, and marshalled its voluminous factual findings to conclude that Petitioners had proven the Commonwealth's school funding scheme violated both the Education Clause and the equal protection guarantees of Article III, Section 32.

1. Defining A Thorough and Efficient System of Public Education to Serve the Needs of the Commonwealth

From the outset of the case, the parties advanced widely different interpretations of the Education Clause. Petitioners asserted that the clause imposed an absolute duty on the General Assembly "to provide every student in the Commonwealth with a high-quality, contemporary education[,]" which "in the 21st century is an education that prepares all students for college, careers, and civic participation."[218] By contrast, and in a reformulation of their argument in *William Penn II* that education was "textually committed" to the legislature alone, Legislative Respondents claimed that the clause only required a "basic standard public school

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[216] *Id.*
[217] *Id.* at 962.
[218] Petitioners' Brief, *supra* note 210, at 7.

education" whose parameters should be determined by the General Assembly.[219]

Noting that the parties' dispute over the Clause's meaning centered on the import of two key phrases—"thorough and efficient" and "to serve the needs of the Commonwealth"—the court considered each in turn, beginning its analysis with the "ultimate touchstone" in constitutional interpretation, "the actual language of the Constitution itself[,]" interpreted "in its popular sense, as understood by the people when they voted on its adoption."[220]

As a preliminary matter, the court had to "determine at what point in time the meaning of the phrase [thorough and efficient] should be evaluated."[221] As the Court explained:

> Petitioners assert that the relevant time period is **1874**, when the phrase was **first** adopted in the Education Clause. Legislative Respondents, on the other hand, argue that the relevant time period is **1967**, when the **current** version of the Education Clause was adopted, notwithstanding that the same phrase appeared earlier.[222]

The court took guidance from Section 1953 of the Pennsylvania Statutory Construction Act, which states that "[w]henever a section or part of a statute is amended . . . the portions of the statute which were not altered by the amendment shall be construed as effective from the time of their original enactment . . . ."[223] Accordingly, the court concluded that because the phrase thorough and efficient remained unchanged when the constitution was revised, "the meaning of the phrase should be construed in the same manner as when the language first appeared in 1874."[224]

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[219] *See, e.g.*, PPT Brief, *supra* note 210, at 42; Speaker Cutler's Post-Trial Brief at 26-27, *William Penn III*, 294 A.3d 537 (No. 587 M.D. 2014) [hereinafter Speaker Brief].

[220] *William Penn III*, 294 A.3d at 881 (citing Robinson Twp., Washington Cnty. v. Commonwealth, 83 A.3d 901, 943 (Pa. 2013)).

[221] *Id.* at 882-83.

[222] *Id.* at 883.

[223] 1 PA. CONS. STAT. § 1953 (2022).

[224] *William Penn III*, 294 A.3d at 883. However, the court was careful to emphasize that "although the Education Clause is interpreted as understood by the

The court thus examined several dictionaries from the 1870s to determine how the words thorough and efficient would have been understood at the time they were added to the constitution,[225] and buttressed its analysis by consulting numerous other jurisdictions' interpretations of the same words in their own education clauses.[226] The court ultimately agreed with Petitioners that a thorough and efficient system of public schools would have been understood as one that was complete and "effective or competent to produce the intended effect."[227] In so doing, the court rejected Legislative Respondents' argument that the Education Clause required only "standard basic" education, consistent with the Pennsylvania Supreme Court's view that the Education Clause does not merely require the General Assembly to provide and sustain any system of public education, but one "of a specified quality."[228]

Next, the court considered the historical context in which the qualitative standard of thorough and efficient was introduced, invoking the well-settled principle that constitutional interpretation can include an examination of "the occasion and necessity for the provision; the circumstances under which the amendment was ratified; the mischief to be remedied; the object to be attained; and the contemporaneous legislative history."[229] The court concluded that the clause's origins demonstrated the phrase thorough and efficient was intended to enshrine a comprehensive, effective system of education across the Commonwealth, observing that "it is clear from the history of the Education Clause that the system of

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voters at the time of its adoption, that does not mean that what constitutes a 'thorough and efficient system of public education to serve the needs of the Commonwealth' should be gauged by what would have satisfied this standard at the time of adoption. The parties do not apparently dispute that it should be a contemporary standard that has evolved with the passage of time." *Id.* at 884.

[225] *Id.* at 884.

[226] *Id.* at 886-93 (citing cases).

[227] *Id.* at 884-85.

[228] William Penn Sch. Dist. v. Pennsylvania Dep't of Educ. (*William Penn II*), 170 A.3d 414, 457 (Pa. 2017).

[229] *William Penn III*, 294 A.3d at 882 (citing Robinson Twp., Washington Cnty. v. Commonwealth, 83 A.3d 901, 945 (Pa. 2013) and the Statutory Construction Act of 1972, 1 PA. CON. STAT. §§ 1921, 1922 (2023)); *see also William Penn II*, 170 A.3d at 450 (endorsing a consideration of constitutional history as a "sensible approach" taken by other states).

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."[230] The court also found significant that "[w]hile earlier models of schools served select students fortunate enough to attend, the public schools evolved into pauper schools, focusing on the poor, until finally, in line with William Penn's vision, they were intended to educate all children. Thus, while uniformity may have been rejected, equality was not."[231]

The court then turned to an analysis of the clause's concluding phrase, added in 1967, that required this thorough and efficient system of education to serve the needs of the Commonwealth.[232] The court recognized this as the clause's statement of purpose: if a thorough and efficient system of public education is one that is "competent to produce the intended effect," that intended effect was "not only to educate children, but also to ensure those children have the opportunity to become productive members of society when they become older[,]" thereby securing the future of the Commonwealth.[233] That is, the court explained, a thorough and efficient system serves the needs of the Commonwealth when it is "effective in producing students who, as adults, can participate in society, academically, socially, and civically[.]"[234]

To further inform this understanding, the court once again examined education's roots in the Commonwealth's "earliest history," and concluded that "the importance of educating all youth to ensure the future of the Commonwealth was a steadfast belief that survived centuries, ultimately culminating in it being explicitly memorialized in the 1967 constitution with the addition of the phrase 'to serve the needs of the Commonwealth.' "[235] The court declined to adopt Legislative Respondents' proposed interpretation of the 1967 amendments, writing that

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[230] *William Penn III*, 294 A.3d at 885.

[231] *Id.*

[232] *Id.* at 885 (quoting PA. CONST. art III, § 14).

[233] *Id.* at 884-85.

[234] *Id.* at 885.

[235] *William Penn III*, 294 A.3d at 886 (citing findings of fact ¶¶ 33, 37, 56-57, 61 made by court).

> [w]hat the history illustrates is the changes to the Education Clause in 1967 did not alter the purpose of the Education Clause as adopted in the 1874 Constitution. In addition to continuing to require a "thorough and efficient system of public education," the new Education Clause made it explicitly clear that such a system was important to the future of the Commonwealth.[236]

The court also specifically rejected Legislative Respondents' attempt to reintroduce justiciability concerns by interpreting the clause as a grant of extreme deference to the legislature: "[T]he legislature does not define the Constitutional requirement and cannot be the final arbiter of whether it is meeting its constitutional obligation . . . . To hold otherwise would rubber stamp legislative action without regard for whether it passes constitutional muster."[237]

Accordingly, the court declared that under the Education Clause, "[T]he 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."[238]

2. Developing a Framework for Evaluating Whether Respondents are Fulfilling their Constitutional Obligation

With the mandate of the Education Clause finally defined, the Commonwealth Court set out to devise "a broad, flexible judicial standard for assessing legislative fulfillment of [that] constitutional mandate."[239] Once again, Petitioners and Legislative Respondents presented differing views on the proper framework for evaluating

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[236] *Id.*; *accord* William Penn Sch. Dist. v. Pennsylvania Dep't of Educ. (*William Penn II*), 170 A.3d 414, 418 (Pa. 2017) (observing that the Education Clause "has remained in our Constitution in materially the same form since 1874").

[237] *William Penn III*, 294 A.3d at 892; *accord William Penn II*, 170 A.3d at 460 (holding that "the Education Clause does not textually repose in the General Assembly the authority to self-monitor and self-validate its compliance with that provision[.]").

[238] *William Penn III*, 294 A.3d at 886.

[239] *William Penn II*, 170 A.3d at 450-51.

the Commonwealth's school funding scheme. Petitioners argued that the court should frame its inquiry by examining "whether the funding system achieves or is likely to achieve the quality of education that the state's constitution requires[,]" considering "the funding available to districts, the educational resources districts are able to provide, and the outcomes that result from those resources."[240] Legislative Respondents argued that instead, the court should revive the reasonable relation standard from *Danson* and *Marrero*, limiting its evaluation of the system to a determination of whether Respondents' efforts to support and maintain the public education system have "a reasonable relation to the purpose expressed in the Education Clause."[241] Once again, Respondents' argument appeared to resurrect the political question doctrine: they posited that the court should only evaluate the sufficiency of the system by looking at a list of basic minimum inputs,[242] and should not consider student outcomes at all, because doing so "would render the Education Clause standard unmanageable . . . and require the court to make policy judgments reserved for the General Assembly."[243]

The court began its analysis by tracing the origins of the reasonable relation test from *Teachers' Tenure Act Cases* to *Danson* to *Marrero* and examining the Pennsylvania Supreme Court's treatment of those cases.[244] The court concluded that in determining that the case was justiciable, the Pennsylvania Supreme Court majority had indeed set *Teachers' Tenure Act Cases, Danson,* and *Marrero* aside:

> Ultimately, the Supreme Court majority did not rest its decision upon the "unstable three-legged stool" . . . and, instead, concluded that this matter was, in fact, justiciable . . . reversing this Court's decision to the

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[240] Petitioners' Brief, *supra* note 210, at 32-37.

[241] Speaker Brief, *supra* note 219, at 21-22.

[242] *Id.* at 46; PPT Brief, supra note 210, at 42-43.

[243] PPT Brief, *supra* note 210, at 64-66.

[244] William Penn Sch. Dist. v. Pennsylvania Dep't of Educ. (*William Penn III*), 294 A.3d 537, 902-07 (Pa. Commw. Ct. 2023).

> contrary, and thereby rejecting the contrary precedent upon which this Court had relied.[245]

The court also cited approvingly to Chief Justice Saylor's observation in his dissent that the reasonable relation test used in the prior cases "was not designed to evaluate whether a branch of state government has fulfilled its constitutional obligations" and that "[i]t was wrongly applied in this way in *Danson and Marrero II*[.]"[246] The court concluded that "under the analysis in both the majority and dissenting opinions in *William Penn II*, the reasonable relation test would not properly apply or control the analysis in this case. The Court will, therefore, not rely on it."[247]

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[245] *Id.* at 906 (citing William Penn Sch. Dist. v. Pennsylvania Dep't of Educ. (*William Penn II*), 170 A.3d 414, 445 (Pa. 2017).

[246] *Id.* at 907 (citing *William Penn II*, 170 A.3d at 353 (Saylor, C.J., dissenting)).

[247] *Id.* The court did, however, conclude that Petitioners had to demonstrate Respondents' failure to fulfill their duty under the Education Clause "clearly, plainly, and palpably" violated the Constitution. Petitioners had posited that although they would "prevail . . . under any burden," their claim should be evaluated by a "preponderance of the evidence" standard, because the court was "not being asked to evaluate 'whether the State has done too much['] " by passing a violative act, but instead "[']whether the State has done enough' to meet the constitutional standard set forth in the Education Clause." Petitioners' Brief, *supra* note 210, at 34, 34 nn. 6-7; *see also* Petitioners' Proposed Findings of Fact and Conclusions of Law, *supra* note 195, ¶¶ 76-77, at 532-33 (citing cases). Nevertheless, the court took the view that because "legislative acts are inextricably tied to resolving this issue . . . Petitioners must show Respondents are clearly, palpably, and plainly violating the Constitution." *William Penn III*, 294 A.3d at 908. The court proceeded to find that Petitioners had made the requisite showing. *Id.* at 963 ("[T]he Court concludes Petitioners satisfied their burden of establishing the Education Clause was clearly, palpably, and plainly violated because of a failure to provide all students with access to a comprehensive, effective, and contemporary system of public education that will give them a meaningful opportunity to succeed academically, socially, and civically."). And the court rejected Legislative Respondents' contention that because the "clearly, plainly, and palpably" standard entitled them to a "presumption of constitutionality," the court was not permitted to weigh the competing evidence and determine which it found to be more persuasive. *See* Speaker Brief, *supra* note 219, at 21-27, 81; PPT Brief, *supra* note 210, at 9-12. The court remarked that this argument "appears to blur the line between the burden of proof and the Court's role as factfinder[,]" and that if the court were prohibited from making credibility determinations and weighing evidence, and instead "simply had to

Instead, the court adopted a framework intended to enable a "qualitative assessment" of whether the Legislature was fulfilling its constitutional obligation under the Education Clause. The court stated that it found 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."[248] But the court made it plain that determining whether that constitutional standard was being met required an examination of the structure of the funding scheme, the educational resources available to students, and the ability of the education system to produce good results for those students. As the court explained, citing to numerous other states that had deemed outcomes "highly relevant[,]"[249] "[w]hether the system of public education is 'thorough and efficient' and 'serv[ing] the needs of the Commonwealth,' necessarily requires an examination, not just of the inputs, but also the outcomes."[250] The court did not accede to Respondents' view that a consideration of outcomes was inherently fraught with policy choices; to the contrary, the court concluded that one must examine the outcomes of the system to gauge its adequacy and "whether it is working to provide the opportunity to succeed to all students."[251] With this framework in place, the court set out to evaluate the thoroughness and efficiency of the current school funding system.

3. Evaluating the Adequacy of Respondents' Funding System Under Count I

Examining the adequacy of a school funding system that serves 1.7 million students of different needs, in different communities, and with different abilities to raise funds was no small task. Yet, the court met it head on, with a painstaking review of the evidence of

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defer to the legislature and its witnesses, there would have been no need for a trial[.]" Post-Trial Motion Memorandum Op. at 11-12, *William Penn III*, 294 A.3d 537 (No. 587 M.D. 2014).

[248] *William Penn III*, 294 A.3d at 909.

[249] *Id.* at 926 (citing cases).

[250] *Id*. (citation omitted).

[251] *Id.*

the system's inputs and outputs, and came to "the inescapable conclusion that these students [in low-wealth districts like Petitioners'] 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."[252]

a. The Inputs of a Thorough and Efficient System of Public Education

The court began with an examination of "the inputs into the system of public education"—the "most obvious" being the input of funding, and "the resources provided to students . . . such as courses and curricula, staff, facilities, and instrumentalities of learning," which "inevitably are tied to funding[.]"[253]

The court found significant consensus among the parties about the importance of resources, noting that at trial the Department of Education had "identified [educational] strategies that will help students become college and career ready, best ensure student success, and close achievement gaps[,]"[254] and then "[e]ducators credibly testified to lacking the very resources state officials have identified as essential to student achievement."[255] Admissions from Legislative Respondents echoed this understanding. The court observed that one of Respondents' experts "agreed with numerous premises of Petitioners' case, from the impact of educational interventions on students, to the effect of mandated costs on school districts, to the importance of the research of scholars such as Petitioners' experts[,]"[256] while another was just "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."[257] The court's conclusions about the value of specific inputs were also rooted in this consensus. For example, when Petitioners testified that they

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[252] *Id.* at 937.
[253] *Id.* at 909, 911-26.
[254] *William Penn III*, 294 A.3d at 578.
[255] *Id.* at 962.
[256] *Id.* at 829.
[257] *Id.* ¶ 2157, at 832 (finding of fact made by court).

needed to provide certain students with small-group instruction, their testimony was buttressed by the Department of Education[258] and by Legislative Respondents' expert,[259] both of whom agreed on the importance and effectiveness of small-group learning.[260]

The Court concluded that the evidence demonstrated 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.[261]

This resulted in "manifest deficiencies between low-wealth districts . . . and their more affluent counterparts."[262]

i. Adequate Funding

In examining the funding available to students, the court focused on the evidence demonstrating that public schools rely heavily on local funding with "more than half [of school funding revenue] generally com[ing] from local sources, primarily in the form of local property taxes."[263] The court concluded that heavy reliance on local funding results in low-wealth districts being negatively impacted.[264] The court relied upon expert testimony demonstrating that districts with the same tax rate "can generate significantly different amounts based on property wealth and

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[258] *E.g., id*. at 913 ("The Department has also recognized a number of other strategies related to programming that can help students become college and career ready.").

[259] *Id.* ¶ 2143, at 829 (finding of fact made by court).

[260] *See also, e.g.*, *William Penn III*, 294 A.3d at 918 (discussing consensus regarding impact of reducing class size).

[261] *Id.* at 925.

[262] *Id.* at 962.

[263] *Id.* at 909 (citing findings of fact ¶¶ 296, 377-379, 1875 made by court).

[264] *Id.*

income wealth."[265] This was buttressed by district witnesses that "credibly testified [that] they already tax at higher rates than the wealthier districts, and increasing taxes has, on occasion, decreased revenue."[266] The court concluded that these tax increases are not even sufficient to keep up with rising costs, noting that both Petitioners' and Respondents' expert witnesses acknowledged dramatic increases in unreimbursed pension expenses.[267] The court also credited evidence demonstrating that students with high needs are disproportionately educated in low-wealth school districts, further compounding the challenges faced by these districts.[268]

The court also agreed that numerous efforts by Respondents—from their 2007 Costing Out Study to their formation of a state funding commission and creation of different funding formulas—"credibly establish[ed] the existence of inadequate education funding in low wealth districts like Petitioners, a situation known to the Legislature."[269] Although the court declined to hold that figures calculated pursuant to the eighteen-year-old Costing Out Study could "definitively measure the amount of revenue districts throughout the Commonwealth will need in the future to provide each student a thorough and efficient education[,]" the court agreed "with the salient concept . . . that school districts need more resources, and that the inadequacy and inequity of Pennsylvania's funding system is not felt evenly as low-wealth districts disproportionately suffer from both adequacy and equity shortfalls."[270]

Moreover, the court recognized that "[t]he concerns that underlie the perceived need for the hold harmless provision"—which reduces the funding distributed to some districts through the Fair Funding Formula in order to prevent new funding shortfalls that would occur in *other* districts—"provide further support for the existing of the funding shortfalls."[271] In doing so, the court recalled

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[265] *Id.* (citing findings of fact ¶¶ 1883-1884 made by court).

[266] *William Penn III*, 294 A.3d at 909 (citing finding of fact ¶ 479 made by court).

[267] *Id.* at 909-10.

[268] *Id.* ¶ 1886, at 770 (finding of fact made by court).

[269] *Id.* at 910.

[270] *Id.* ¶ 1906, at 775 (finding of fact made by court).

[271] *Id.* at 910.

the testimony of the president of PARSS and superintendent of a rural school district:

> 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."[272]

The court rejected Respondents' efforts to argue that these funding inadequacies were the result of choices that districts made "outside the General Assembly's control[,]" such as districts' "decisions to maintain large fund balances and/or expend funds on expenses they do not deem necessary[.]"[273] The court pointed to testimony from the districts' business managers, who explained that often "fund balances . . . are not actually expendable dollars" and are vital for districts to function when other funding is delayed, or the district experiences unexpected expenses, noting that even Speaker Cutler's witness acknowledged that "the General Assembly also has fund balances[,]" for the same reasons Ultimately, the Court ruled, "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." [274]

ii. Courses, Curricula, and Other Programs that Prepare Students for College and Careers

The court also scrutinized evidence of the courses, curricula, and programs available in low-wealth schools like Petitioners', pointing to the consensus among the parties that "curriculum is an

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[272] *William Penn III*, 294 A.3d. at 910 (alteration in original) (citing finding of fact ¶ 1700 made by court).

[273] *Id.* at 910-11.

[274] *Id.*; *accord* William Penn Sch. Dist. v. Pennsylvania Dep't of Educ. (*William Penn II*), 170 A.3d 414, 442 n.40 (Pa. 2017).

essential element of a thorough and efficient system of public education."[275] The court then catalogued the evidence of what thorough and efficient programming entails, according to the state's own education officials: curricula that complies with state standards;[276] AP, IB, or college-level courses that "help students become college and career ready";[277] art, music, and extracurricular extracurricular activities—such as sports—that "help students develop leadership, collaboration, and persistence skills";[278] "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;[279] and high quality early childhood education, which state education officials testified was "particularly important for children living in poverty[.]"[280]

The court concluded that these were all deficient in the Petitioners' school districts and in the School District of Philadelphia, citing evidence that some districts' curricula fail to align with state standards, "despite Board regulations requiring same, because they lack the resources – money, personnel, and time – to revise them."[281] The court also noted that many districts have had to cut or modify their art and music programs due to funding issues, and that in Greater Johnstown, art teachers taught from carts, while at one elementary school in William Penn, "art and music is taught in the basement in a room that has an opening to a sump pump, a large drainage pipe running through it, and bundles of wires snaking across the walls."[282] The court pointed to evidence presented by districts that college-level courses are not widely available—despite being listed on course catalogues—due to learning gaps that preclude student success or to an inability to

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[275] *William Penn III*, 294 A.3d at 911.
[276] *Id.* at 912.
[277] *Id.* (citing finding of fact ¶ 249(i) made by court).
[278] *Id.* at 912, 915-16 (citing finding of fact ¶ 249(m) made by court).
[279] *Id.* at 913 (citing findings of fact ¶¶ 249(c)-(f), (k), 412 made by court).
[280] *William Penn III*, 294 A.3d at 913-15.
[281] *Id.* at 912 (citing findings of fact ¶¶ 520, 880, 1088 made by court).
[282] *Id.* (citing finding of fact ¶ 1454 made by court).

achieve a passing score on college-level course exams.[283] The court also cited numerous examples of testimony from school district witnesses explaining their inability to implement critical intervention programs in reading and math, noting that the availability of these programs in low-wealth school districts "does not meet the demand[,]" and recalling Panther Valley Superintendent McAndrew's testimony that "we know the students need it, and sometimes it's a coin flip on who gets it."[284] The evidence also demonstrated that similar limitations in funding hamper the Petitioner Districts' ability to provide pre-K to a sufficient numbers of students. The court noted that, for example, Greater Johnstown was forced to reduce its pre-K enrollment to 100 students "due to financial issues, leaving a wait list for students that would otherwise be eligible[,]" where in Panther Valley, pre-K served only 18 students and the district could not expand the program "due to lack of funds, space, and staff[.]"[285]

iii. Sufficient Numbers of Well-Trained Staff

The court held that "[a]nother 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."[286] The court pointed to the evidence undergirding each of these components, noting that having sufficient teachers was critical to enabling the small class sizes that correlate with improvements in student achievement—a fact acknowledged by Respondents, outside of the courtroom, through their efforts to provide grants to promote smaller class sizes.[287] The court also cited testimony from the Pennsylvania Department of Education and Petitioners' expert that a qualified and stable teaching force with subject matter expertise correlates with greater student success, whereas teacher turnover can have a negative impact.[288]

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[283] *Id.*

[284] *Id.* at 914 (quoting finding of fact ¶ 643 made by court).

[285] *Id.* at 915 (citing findings of fact ¶¶ 566, 719 made by court).

[286] *Id.* at 916.

[287] *Id.* at 918 (presenting the benefits that Ready-to-Learn block grants aim to confer).

[288] *Id.* at 916.

The court also recognized the "extensive credible testimony from educational professionals and experts" about the importance of "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."[289]

And once again, the court found that the staffing resources in Petitioner Districts and in the School District of Philadelphia were starkly insufficient. The court noted the districts' consistently large classes, which "undermine student success."[290] The court highlighted Superintendent McAndrew's dismay over witnessing first graders raise their hands and not receive assistance, and of kindergartners "waiting for their education" because their classrooms are understaffed.[291] The court noted that in many cases, districts are operating with the "bare minimum" of support personnel required by law, "of an insufficient quantity to actually meet student needs," or are funded through one-time grants that quickly expire, leading to staffing cuts.[292] The court also noted student-to-counselor ratios upwards of the mid to high hundreds, social workers with caseloads of 500-600 students each, psychologists responsible for 1000 students, and in Shenandoah Valley, "an elementary assistant principal doubling as a school psychologist and an elementary principal who assumed the responsibilities of a reading specialist[.]"[293] The court also cited, among other deficiencies, William Penn's lack of any reading or math specialists, and the numerous instances in which "teachers have to teach multiple classes of different subjects **simultaneously**."[294] "It is beyond cavil[,]" the court declared, "to say that this is not effective learning."[295]

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[289] *Id.* at 918.
[290] *Id.* at 916-17.
[291] *William Penn III*, 294 A.3d at 916-17.
[292] *Id.* at 918-19.
[293] *Id.* at 919.
[294] *Id.* at 916 (citing finding of fact ¶¶ 501, 1067 made by court).
[295] *Id.*

iv. Safe and Adequate Facilities

The court next turned to building conditions, stating that "[a]nother component of a thorough and efficient system of public education that is generally not in dispute is the need for facilities."[296] The court cited to testimony from the Department of Education and the State Board identifying "adequate facilities as being conducive to learning[,]" and Dr. Pedro Noguera, Petitioners' expert and the Dean of the University of Southern California School of Education, that "quality and cleanliness of facilities are important for academic achievement."[297] In a rebuke of Respondents' position that the system should be found constitutional as long as school facilities were "generally safe,"[298] the court was unconditional, stating: "[I]t is not enough that the facilities in which students learn are 'generally safe,' as Legislative Respondents contend. Rather they must **be** safe, and adequate."[299]

The court defined this "safe[] and adequate" standard by cataloging its absence, offering a long list of deficiencies in Petitioner Districts and the School District of Philadelphia. The court cited to various pictures of facilities conditions and numerous witnesses' testimony about "makeshift classrooms set up in hallways, closets, and basements," "schools without functioning heat and air conditioning," and old, "outdated" science labs.[300] The court also noted that it "has concerns whether all the facilities are, in fact, safe[,]" citing to example after example of mold, lead paint, asbestos, non-potable water, chipping facades, falling masonry, roaches and rodents, leaking roofs, and one first grade classroom where a teacher testified, "[Y]ou could see the sky. There was a hole in the ceiling . . . that you could literally look up and see the sky."[301] The court rejected Legislative Respondents' position that

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[296] *Id.* at 920.

[297] *William Penn III*, 294 A.3d at 920 (citing findings of fact ¶¶ 430, 1982 made by court).

[298] *Id.*

[299] *Id.* (citing PPT Brief, *supra* note 210, at 42-43, Speaker Brief, *supra* note 219, at 46).

[300] *Id*. at 921-23.

[301] *Id.* at 923 (alteration in original) (citing finding of fact ¶ 759 made by court).

these conditions were cherry-picked and unrepresentative, putting it plainly: "While there certainly are new facilities at some of the districts, there are many that need repair, but the districts lack the funding to do so."[302]

v. Modern, Quality Instrumentalities of Learning

Finally, the court held that "instrumentalities of learning are an essential element of a quality public education in the Commonwealth, though they are not as rudimentary as Legislative Respondents suggest."[303] Referencing Legislative Respondents' argument in their opening statement that students in Petitioner districts had "the basic instrumentalities for an adequate education, with chairs to sit in, [and] desks or tables to write at,"[304] the court declared: "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."[305] Instead, the court held that students must have access to "modern, quality" tools that enable students to "meet the ever-changing needs of the modern-day workforce and become productive members of society, as our forebearers had envisioned."[306] The court cited to the Pennsylvania Department of Education's ESSA Plan and the State Board's Master Plan for Basic Education, both of which recognize the central role of technology in a contemporary education, and superintendents' testimony about the importance of "technology and labs, and other specialized equipment so [students] can compete in the workforce."[307] And the court endorsed the State Board's concern that " 'differences in infrastructure and capabilities' in the Commonwealth's school districts 'will lead to opportunity gaps for some students that will have lasting ramifications for the individuals and their communities.' "[308]

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[302] *Id.*
[303] *William Penn III*, 294 A.3d at 923.
[304] Transcript of Proceedings Opening Statements, *supra* note 206, at 145.
[305] *William Penn III*, 294 A.3d at 923-24.
[306] *Id.* at 924.
[307] *Id.* (citing findings of fact ¶¶ 250, 681, 1727 made by court).
[308] *Id.* (citing finding of fact ¶ 137 made by court).

The court then went on to describe the evidence of this "opportunity gap" in Petitioner Districts—a fault line laid bare by the global pandemic that had struck almost two years before trial began. As a headline in the Commonwealth's biggest newspaper put it less than a week into COVID-19 shutdowns: "As coronavirus closes schools, wealthier districts send laptops home with students. What about poorer districts?"[309]

Testimony at trial about low-wealth schools' difficulties transitioning to online learning in March of 2020 provided a definitive answer to that question: the court found that

> [w]hen 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 . . . . This created both short-term and long-term problems, which illustrate the compounding nature of underfunding.[310]

The court also recognized the limitations of the sweeping—but short-term—infusion of seven billion dollars in federal emergency education funding that had begun to reach districts by the time trial commenced, including Elementary and Secondary School Emergency Relief (ESSER) and American Rescue Plan funds.[311] Rejecting Legislative Respondents' argument that whatever the districts' past deficiencies, they now had everything they needed as a result of COVID relief, the court recognized that the pandemic did not resolve low-wealth districts' challenges, but instead "highlighted these deficiencies" in the first instance.[312]

The court also pointed to the challenges districts will face in maintaining, upgrading, or eventually replacing the technology their

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[309] Maddie Hanna, Kristen A. Graham, and Melanie Burney, *As coronavirus closes schools, wealthier districts send laptops home with students. What about poorer districts?*, PHILA. INQUIRER (Mar. 18, 2020, 8:44 PM), https://www.inquirer.com/health/coronavirus/coronavirus-closed-schools-inequity-technology-laptop-philadelphia-new-jersey-20200318.html.

[310] *William Penn III*, 294 A.3d at 925.

[311] *Id.* ¶ 303, at 585 (finding of fact made by court).

[312] *Id.* at 925.

one-time funds enabled them to purchase.[313] And the court noted that "even one of the most basic instrumentalities of learning – textbooks – are not up to par[,]" noting the copious evidence that textbooks were in "short supply," "tattered and worn[,]" and "severely outdated[,]" with one textbook listing Bill Clinton as the last president, and other textbooks listing "countries that no longer exist."[314] "In short," the court concluded, "instrumentalities of learning, especially technology, are not a one-and-done but are continually evolving components of a thorough and efficient system of public education in which resources are necessary."[315]

b. Outcomes

After considering the evidence of the inputs into Pennsylvania's public education system, the court turned to an evaluation of the outcomes the system produces, which it concluded 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."[316] As stated *supra*, the court rejected Respondents' contention that outcomes were irrelevant to an assessment of constitutional adequacy, agreeing with a number of other courts that "[b]ecause the adequacy standard 'is plainly result-oriented,' the proper focus on a constitutional adequacy analysis should be on outputs that measure student performance."[317]

The court identified numerous outcomes that could "assist the court in determining whether every student is receiving a meaningful opportunity to succeed academically, socially, and

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[313] *Id.* at 924-25.

[314] *Id.* (citing finding of fact ¶¶ 775, 879, 1474 made by court).

[315] *Id.* at 925.

[316] *William Penn III*, 294 A.3d at 926.

[317] *Id.* (quoting Morath v. Tex. Taxpayer & Student Fairness Coal., 490 S.W.3d 826, 863 (Tex. 2016)); *see also id.* (citing Abbeville Cnty. Sch. Dist. v. State, 767 S.E.2d 157, 171 n.17 (S.C. 2014) for the proposition that "outputs are 'highly relevant' and necessary to determine whether students received the opportunity for a minimally adequate education"); *id.* at 927 (citing Davis v. State, 804 N.W.2d 618, 633-34 (S.D. 2011) for the proposition that petitioners "still must show the correlation between funding levels and a constitutionally adequate education. Thus, educational results are also a factor in determining constitutionality of the system.").

civically," including statewide assessments, growth measures, national assessments, high school graduation rates, and postsecondary success.[318] The court also held that "to the extent evidence demonstrates that subgroups of certain students are not performing at a sufficient level, this, too, can serve as evidence that the system is broken and not meeting the constitutional mandate[,]" noting other states in which courts had done the same.[319] Reviewing the extensive outcome evidence, the court concluded that "the effect of th[e] lack of resources shows in the evidence of outcomes[.]"[320]

The court focused first on state assessment data—the Pennsylvania System of School Assessment exams (PSSAs), which are administered in grades three to eight in English language arts (ELA) and math, and the Keystone Exams, end-of-course tests in algebra, biology, and literature that are generally administered in high school.[321] As an initial matter, the court rejected Legislative Respondents' efforts to invalidate the state's assessments as a reliable indicator of student performance,[322] holding that their value "cannot legitimately be challenged[,]" in part based on the fact that they were established "at the direction of the General Assembly" itself as a way of "measur[ing] objectively the adequacy and efficiency of the educational programs offered by the public schools of the Commonwealth."[323] The court also cited the numerous ways in which the Commonwealth utilizes the results of these

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[318] *Id.* at 927.

[319] *Id.*

[320] *Id.* at 962.

[321] *See id.* ¶¶ 170-79, at 567-68 (findings of fact made by court).

[322] Respondents' attack on the validity of state assessments was waged primarily through their expert witness Dr. Christine Rossell, who attempted to rebut the Pennsylvania Department of Education's testimony that its state assessments are standards- and criterion-based, and thus reflective of a student's ability to meet specific benchmarks. In Dr. Rossell's testimony, she insisted that the test was in fact designed to generate a bell curve, based on her ability to "eyeball" a curve in certain sets of results and her opinion that " 'no one would respect the test' if everyone scored high or low." *William Penn III,* 294 A.3d at 928. The Court declined to credit Dr. Rossell's testimony, noting that her analysis included numerous errors and false assumptions, and that she admitted she was "not a psychometrician and did not consult with any psychometricians involved in the design [of the tests] or with the Department." *Id.*

[323] *Id. at* 927 (alteration in original).

assessments, including to measure "whether a student is achieving proficiency[,]" whether the system is effective, whether students have met the criteria for graduation, and whether teachers, administrators, and schools themselves are performing adequately.[324]

The court reviewed the PSSA and Keystone Exam results both in Petitioner Districts and across the state and found that the evidence demonstrated hundreds of thousands of students across the Commonwealth fail to reach proficiency each year, and that the results in Petitioner Districts and other low-wealth districts are "even lower . . . , 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."[325]

The court also reviewed evidence put forward by Respondents of two other outcome measures: PVAAS, the state's system for evaluating academic growth, which Respondents claimed "isolates the impact of schools and controls for out-of-school factors[,]"[326] and the NAEP, a national exam administered to fourth and eighth graders every two years, in which Respondents claimed Pennsylvania students' scores are almost always significantly higher than the national average.[327] But the court found that in both instances, the "encouraging" averages put forward by Respondents' witnesses masked significant shortfalls and achievement gaps.[328] For example, despite Respondents' expert witnesses' contentions that "Pennsylvania outperforms its peers" on the NAEP, the court noted that "when student subgroups, such as racial and ethnic minorities and economically-disadvantaged students are considered, Pennsylvania has one of the largest NAEP achievement gaps in the nation."[329] And the court identified several limitations of PVAAS data, including that "a high growth PVAAS score does not translate to high achievement[,]"[330] that comparing districts to each other on

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[324] *Id.* at 928.
[325] *Id.* at 929.
[326] PPT Brief, *supra* note 210, at 70.
[327] *William Penn III*, 294 A.3d at 932-34.
[328] *Id.* at 934.
[329] *Id.* at 934 (citing findings of fact ¶¶ 2112, 2228 made by court).
[330] *Id.* at 932.

PVAAS was virtually impossible, and that PVAAS scores were volatile, with "extreme swings in the results one year to another[.]"[331] Accordingly, the court determined that PVAAS scores "must be examined in the context of the other measures, and not in isolation[,]" and that "they can be misleading when viewed alone or out of context[.]"[332]

The court then added that context, finding, for example, wide-scale deficiencies in low-wealth districts' high school graduation rates, where "10 to 20 out of every 100 students do not graduate high school[,]" and where graduation rates among vulnerable student subgroups are even lower.[333] The court also noted "gaps between the number of students who graduate from low-wealth districts versus students who graduate from more affluent districts."[334] The court subsequently considered the postsecondary enrollment rates in Petitioner Districts and other low-wealth schools, which in some instances "fell below the state average by as much as 20 percentage points[,]"[335] and postsecondary attainment rates, which were even lower.[336]

As noted *supra*, during pre-trial motions the court had rejected Respondents' efforts to exclude evidence of the system's race-based achievement gaps. Considering that evidence, the court found staggering disparities, noting a gap of two grade levels between white and Black students attributable to "the higher concentration of minority students [in] low-wealth districts that lack the financial resources to support those students' needs."[337] From state[338] and national[339] assessments, to high school graduation rates,[340] post-college success,[341] and measures such as AP exams,[342] the court

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[331] *Id*. at 934.
[332] *Id.*at 932, 934.
[333] *William Penn III,* 294 A.3 at 934.
[334] *Id.* at 936.
[335] *Id.*
[336] *Id.* at 937.
[337] *Id.* at 930.
[338] *Id.* at 927-34.
[339] *William Penn III,* 294 A.3 at 934.
[340] *Id.* at 935-36.
[341] *Id.* at 937.
[342] *Id.*

repeatedly found that children of color were lagging far behind their peers. The court found similar achievement gaps for other historically marginalized students, including economically-disadvantaged students (who constitute forty-eight percent of the state's students), English Language Learner (ELL) students, and students with disabilities.[343]

c. Causation

Ultimately, the court concluded that the evidence presented by Petitioners demonstrated not only a system of public education that was constitutionally deficient, but the cause of those deficiencies: Respondents' failure to adequately fund the Commonwealth's system of public education.

The court traced a straight line between the vast body of testimony identifying strategies for student success, the inability of low-wealth communities to raise sufficient funds to pay for the essential resources—as identified by state officials themselves—needed for student achievement,[344] and the rash of unacceptable student outcomes that ensued. Perhaps one of the most straightforward illustrations of the link between funding and student performance was put forward by Dr. Kelly, showing that economically-disadvantaged students outperform their peers by sixteen to twenty percent when they attend school in wealthier districts.[345] The court considered this data in detail:

> 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

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[343] *See id.* at 930, 934-37.
[344] *Id.* at 962-63.
[345] *William Penn III*, 294 A.3 at 931.

> 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%.[346]

The court's conclusion on causation was also an acknowledgement of the broad consensus that already existed about the connection between resources and student success. Witness after witness testified that investing in the educational programs proposed by Petitioner and endorsed by the Pennsylvania Department of Education would improve student outcomes.[347] In fact, the General Assembly itself acknowledged the value of many of these programs through its provision of additional funding for them.[348] Legislative Respondents' witnesses repeatedly conceded that access to resources improves student success, admitting that "on average, money absolutely matters[,]"[349] with "school funding ha[ving] a positive, causal effect upon student outcomes throughout the school trajectory[.]"[350]

The evidence led the court to declare that

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[346] *Id.* at 931 (citations omitted).

[347] *See, e.g., id.* ¶ 403, at 599 (Deputy Secretary Campanini), ¶ 412, at 600 (former Deputy Secretary Stem), ¶¶ 614-615, at 625 (Greater Johnstown Superintendent Arcurio), ¶ 661, at 630 (Panther Valley Superintendent McAndrew), ¶ 1353, at 713 (William Penn Superintendent Becoats), ¶¶ 1724-26, at 752 (Springfield Township Superintendent Hacker), ¶ 1957, at 784 (Petitioners' expert Dr. Barnett), ¶ 1984, at 791 (Petitioners' expert Dr. Noguera), ¶¶ 2142-43, at 829 (Legislative Respondents' expert Mr. Willis), ¶ 2157, at 832 (Legislative Respondents' expert Dr. Koury), ¶ 2206, at 845 (Legislative Respondents' expert Dr. Hanushek) (findings of fact made by court).

[348] *Id.* ¶ 313, at 587 (funding for early intervention programs for special education), ¶ 314, at 587 (Ready-To-Learn Block grants), ¶ 319, at 588 (Pre-K Counts) (findings of fact made by court).

[349] *Id.* at 829, 838 (referencing Legislative Respondents' expert testimony from Mr. Willis and Mr. Eden).

[350] *Id.* at 832.

> 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 are financially able to provide . . . **every child can learn**, regardless of individual circumstances, with the right resources, albeit sometimes in different ways.[351]

And in the Commonwealth, the court concluded that the consistent gaps over a variety of inputs and outputs for economically-disadvantaged students, students of color and other historically underperforming students demonstrated a systemic failure.[352]

Accordingly, the court held that Petitioners had established an entitlement to judgment on Count I. In its order, the court declared: "Respondents have not fulfilled their obligations to all children . . . in violation of the rights of Petitioners" under the Education Clause, which "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[.]"[353]

4. Recognizing a Fundamental Right to a Thorough and Efficient Education

Under Count II, Petitioners argued that Respondents' constitutionally deficient funding scheme also unlawfully discriminated against students in low-wealth communities in violation of the Pennsylvania Constitution's Equal Protection Clause, article III, section 32, depriving those students of "the same opportunities and resources as students who reside in school districts with high property values and incomes[.]"[354] Accordingly, in order to evaluate Petitioners' equal protection claim, the court had to first determine whether the Education Clause conferred an individual right to a thorough and efficient system of education, and the appropriate level of scrutiny for the infringement of such a right.

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[351] *William Penn III*, 294 A.3 at 931.
[352] *Id.* at 937.
[353] *Id.* at 964.
[354] *Id.* at 964-65.

Yet again, the parties took widely different positions: Petitioners asserted that education was a fundamental right under the Pennsylvania Constitution, entitling their equal protection claim to strict scrutiny,[355] while Legislative Respondents argued that "[u]nder Pennsylvania law, there is not a fundamental right to an education because the Constitution does not confer *any* right to an education."[356]

The Commonwealth Court proceeded from the premise that "the issue of whether education is a fundamental right is a matter of first impression in Pennsylvania,"[357] consistent with the Pennsylvania Supreme Court's ruling that prior cases left the question unanswered.[358] Accordingly, the Commonwealth Court anchored its analysis in "general equal protection principles[.]"[359] The court looked to *James v. SEPTA*, in which the Pennsylvania Supreme Court adopted the Supreme Court of the United States' approach to defining a fundamental right by "look[ing] to the Constitution to see if the right infringed has its source, explicitly or implicitly, therein."[360] And the court drew guidance from *Commonwealth v. Edmunds*, considering the factors that the Pennsylvania Supreme Court has used to examine the contours of an individual right under the Pennsylvania Constitution:[361] "1) the text of the Pennsylvania constitutional provision; 2) history of the provision, including Pennsylvania case-law; and 3) related case law from other states[.]"[362]

Beginning with an inquiry into whether a right to education could be derived implicitly or explicitly from the text of the

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[355] *Id.* at 964-65.

[356] PPT Brief, *supra* note 210, at 93; *see also*, Speaker Brief, *supra* note 219, at 83-84.

[357] *William Penn III*, 294 A.3d at 945.

[358] William Penn Sch. Dist. v. Pennsylvania Dep't of Educ. (*William Penn II*), 170 A.3d 414, 462-63 (Pa. 2017).

[359] *William Penn III*, 294 A.3d at 945.

[360] *Id.* at 945-46 (citing James v. Se. Pennsylvania Transp. Auth., 477 A.2d 1302, 1305 (Pa. 1984)).

[361] *See, e.g.*, League of Women Voters v. Pennsylvania, 178 A.3d 737, 803 (Pa. 2018) (citing Commonwealth v. Edmunds, 585 A.2d 887 (Pa. 1991)); Robinson Twp. v. Pennsylvania, 83 A.3d 901, 943 (Pa. 2013) (citing *Edmunds*, 585 A.2d 887).

[362] *William Penn III*, 294 A.3d at 882 (quoting *Edmunds*, 586 A.2d at 895).

constitution, the court determined that because "[t]he Education Clause indisputably imposes a **duty** on the General Assembly to maintain and support 'a thorough and efficient system of public education.' . . . the Education Clause, at least implicitly, creates a correlative right in the beneficiaries of the system of public education—the students."[363] The court examined cases from other jurisdictions in which state education clauses imposing a duty were found to confer a correlative right.[364] In so doing, the court declined to credit Legislative Respondents' claim that the Education Clause did not confer a right because it did not "make an express reference to the people who hold the right and then identify the nature of the right[,]"[365] citing to instances where similar arguments had been rejected.[366]

The court further concluded that an examination of other provisions of the constitution, the clause's origins, and related case law from other states all "support a conclusion that the right to education is fundamental[.]"[367] The court noted education's central role throughout the Pennsylvania Constitution, including in provisions beyond the Education Clause such as the constitutional requirement that education be included in the general appropriations bill, and the Secretary of Education's stature as the only constitutionally mandated cabinet-level officer.[368] The court

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[363] *Id.* at 946; *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. 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.").

[364] *William Penn III*, 294 A.3d at 946-47 (citing Skeen v. State, 505 N.W.2d 299, 313 (Minn. 1993); Seattle Sch. Dist. v. State, 585 P.2d 71, 91 (Wash. 1978); Claremont Sch. Dist. v. Governor, 703 A.2d 1353, 1358 (N.H. 1997)).

[365] PPT Brief, *supra* note 210, at 95-96; *see also* Speaker Brief, *supra* note 219, at 83-84.

[366] *See, e.g.*, *William Penn III*, 294 A.3d at 949 (noting *Skeen*'s rejection of the argument that education cannot be a fundamental right because it is not 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.* at 946 (citing *Skeen* for the proposition that "the Education Clause is a mandate, not simply a grant of power") (emphasis omitted).

[367] *Id.* at 947.

[368] *Id*.

concluded that an examination of the history of the clause, "which is replete with references to the importance of education to the continuation of the Commonwealth[,]"[369] erased "any doubts that may have remained concerning whether education is a fundamental right[.]"[370] The court also examined at length other jurisdictions' treatment of similarly-worded education clauses and found that these cases' fundamental rights analyses largely "bolstered" the court's conclusions.[371] Accordingly, the court held that "Petitioners' equal protection claim is based on a fundamental right to education, the alleged impingement of which should be reviewed under strict scrutiny."[372]

5. Evaluating the Funding System's Disparities Under Count II

Based upon the evidence presented, the court held that Petitioners had demonstrated systemic, disparate treatment of students in low-wealth districts, who were deprived of "the educational resources needed to prepare them to succeed academically, socially, or civically."[373] Faced with the burden to proffer a compelling government interest to justify these disparities and deprivations, Legislative Respondents offered only one: "[T]hat the current system promotes local control"—the theoretical

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[369] *Id.* at 949.

[370] *Id*. at 947.

[371] *Id.* at 947-49 (citing, *inter alia*, Pauley v. Kelly, 255 S.E.2d 859, 874 (W. Va. 1979); Skeen v. State, 505 N.W.2d 299, 313 (Minn. 1993); and Campbell Cnty. Sch. Dist. v. State, 907 P.2d 1238, 1257-58 (Wyo. 1995)). The court also considered two states with similarly worded clauses, Maryland and Ohio, where courts concluded that education was not a fundamental right—however,, the court noted that neither of those courts considered whether the right was "explicitly or implicitly" based in the constitution, as endorsed by the Pennsylvania Supreme Court in *James*, leading the court to conclude that those courts' fundamental rights analyses were not "persuasive or useful." *Id.* at 950-51. By contrast, "the bulk of other jurisdictions that have considered whether education is explicitly or implicitly guaranteed by their constitutions, which is the standard for determining fundamentality in Pennsylvania under *James*, have found education is a fundamental right, much like this Court." *Id.* at 954-55.

[372] *William Penn III*, 294 A.3d at 957.

[373] *Id*. at 960.

autonomy of individual communities to determine how to best meet the educational needs of their students.[374]

The court rejected that premise, holding it was "not persuaded that [local control] is a compelling government interest that justifies the distinction[,]"[375] and citing to numerous other courts that have rejected local control as a justification for disparities between low-wealth and high-wealth districts—including the Pennsylvania Supreme Court itself.[376] In fact, the court pointed out that "Legislative Respondents have not identified how local control would be undermined by a more equitable funding system[,]" and observed 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."[377] Under the current funding scheme, however, the court concluded that any appeal to local control was meaningless.[378]

For the same reasons, the court held that Legislative Respondents' school funding system did not even pass rational basis review, explaining that "[g]iven the fallacies identified by the courts related to local control, with which this Court agrees and also observes, even accepting local control as a legitimate state interest, the Court could not conclude the classification drawn is reasonably related to accomplishing that interest."[379] Accordingly, the court

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[374] *Id*.

[375] The court also noted that to the extent Legislative Respondents were attempting to assert competing government interests as a compelling justification for the system's disparities, the Pennsylvania Supreme Court had 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." *Id.* at 960 n.124 (quoting William Penn Sch. Dist. v. Pennsylvania Dep't of Educ. (*William Penn II*), 170 A.3d 414, 464 (Pa. 2017).

[376] *William Penn II*, 170 A.3d at 442 n.40 (rejecting Respondents' local control argument as "tendentious" and "conclusory in its presentation," and emphasizing that school funding disparities harm local control).

[377] *William Penn III*, 294 A.3d at 961.

[378] *Id.*

[379] *Id.* at 962 n.125. In response to Legislative Respondents' post-trial motion, which asserted that it was error for the court to question the importance

held that Petitioners were entitled to judgment in their favor on Count II, declaring 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[,]" and that "[a]s a result of these disparities, Petitioners and students attending low-wealth districts are being deprived of equal protection of law."[380]

6. Rising to Meet a 'Formidable Challenge': The Court's Remedy

Having concluded that the current school funding scheme violated Petitioners' constitutional rights, the court turned to the final question of how to remedy those violations. The court observed that it was "in uncharted territory with this landmark case[,]" and that "no Pennsylvania court has ever reached the point of fashioning a remedy as to how to address school funding inadequacies[.]"[381] Accordingly, the court decided that "it seems only reasonable to allow Respondents, comprised of the Executive and Legislative branches of government and administrative agencies with expertise in the field of education, the first opportunity, in conjunction with Petitioners, to devise a plan to address the constitutional deficiencies identified herein."[382] The court pointed to numerous other courts that had similarly declined to dictate the specifics of how to remedy constitutional violations and instead adopted the position that the General Assembly must provide adequate funding, but has discretion in how it does so.[383] "This

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of local control, the court put it even more plainly: "This Court did not, and does not, question the importance of local control. However, for the low-wealth districts here, local control is illusory . . . . Something that does not, in reality, exist cannot . . . be rationally related to a legitimate government interest." William Penn Sch. Dist. v. Pa. Dep't of Educ., No. 587 M.D. 2014, 2023 WL 4285737, at *4 (Pa. Commw. Ct. June 21, 2023).

[380] *William Penn III*, 294 A.3d at 964-65.

[381] *Id.* at 963.

[382] *Id.*

[383] *Id.* (quoting Abbeville Cnty. Sch. Dist., 767 S.E.2d 157, 176 (S.C. 2012)) ("[R]efusing to provide the General Assembly with a specific solution to the constitutional violation[.]"); then quoting DeRolph v. State, 677 N.E.2d 733, 747 (Ohio 1997) ("[D]eclining to 'instruct the General Assembly as to the specifics of

approach[,]" the court reasoned, "respects the notion that the Education Clause contemplates that future legislatures must be free to experiment and adjust the state's public-education system, thereby reducing concerns of the judiciary encroaching upon legislative prerogative."[384]

But the court did not leave Respondents without clear parameters: the court was explicit that "[t]hroughout trial, the Department, Board, and expert witnesses identified numerous strategies that improve student outcomes from which Respondents can take guidance."[385] And the court made hundreds of findings, including numerous admissions by Respondents, illustrating what a comprehensive, effective, and contemporary education looks like, and how to measure it.[386] The court emphasized that while "[t]he options for reform are virtually limitless[,]" the requirement, "that imposed by the Constitution, is that **every** student receives 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."[387] As the court concluded in its February 7, 2023 ruling, [a]ll witnesses agree that every child can learn. It is now the obligation of the Legislature, Executive Branch, and educators, to make the constitutional promise a reality in this Commonwealth."[388]

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the legislation it should enact[.]' "); and then quoting Rose v. Council for Better Educ., 790 S.W.2d 186, 216 (Ky 1989) ("The General Assembly must provide adequate funding for the system. How they do this is their decision.").

[384] *Id.*

[385] *Id.*

[386] *See, e.g., William Penn III*, 294 A.3d ¶¶ 136-139, at 537, ¶¶ 145-251, at 564-79, ¶¶ 266-289, at 581-84, ¶ 314, at 587, ¶¶ 408-430, at 599-602, ¶ 681, at 633, ¶ 1727, at 752; ¶¶ 1971-1980, at 788-790, ¶¶ 2040, 2042, at 804, ¶¶ 2142-2148, at 829-30, ¶¶ 2154, 2157, at 831-32 (findings of fact made by court).

[387] *Id.* at 964. In a subsequent opinion denying Legislative Respondents' motion for post-trial relief, the Court reiterated that "it has given Respondents broad discretion, in the first instance, to fashion an appropriate remedy, thereby seeking to respect the separation of powers while simultaneously seeking to fulfill the Court's obligation to ensure constitutional compliance." William Penn Sch. Dist. v. Pa. Dep't of Educ., No. 587 M.D. 2014, 2023 WL 4285737, at *5 (Pa. Commw. Ct. June 21, 2023).

[388] *William Penn III*, 294 A.3d at 964.

IV. THE ROAD AHEAD

From the first minutes of their opening arguments to their final words in the courtroom, Legislative Respondents warned the court of the "very slippery slope" the court would find itself on if it considered Petitioners' claims in *William Penn*.[389] They suggested that the court would be mired in "decade upon decade upon decade of litigation" and face impossible and unmanageable choices if it decided to rule in Petitioners' favor.[390] Referring to the body of school funding cases in other states as "legal quicksand," they exhorted the court not to add Pennsylvania to that list.[391]

But the Commonwealth Court wholeheartedly rejected Respondents' pessimism. In its final opinion denying Legislative Respondents' motion for post-trial relief, the court wrote:

> Having reviewed cases from across the nation, some of which have spanned decades, it would have been easy for the Court to have declined to wade into this abyss. However, the Court has an obligation to uphold the Constitution and simply because a problem is a "formidable challenge" does not mean we should not try to solve it.[392]

Having faced its challenge head-on, the court wrote that it was:

> [N]ow task[ing] 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

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[389] Transcript of Proceedings Opening Statements at 158, *William Penn III*, 294 A.3d 537 (No. 587 M.D. 2014).

[390] Transcript of Proceedings Closing Arguments, *supra* note 202, at 15085.

[391] *Id*. at 15082-86; *see also* Transcript of Proceedings Oral Argument, *supra* note 211, at 11-12.

[392] *William Penn*, 2023 WL 4285737, at *6.

> requires that all students have access to a comprehensive, effective, and contemporary system of public education.[393]

The process of meeting the court's challenge has now begun. On June 21, 2023, the court entered final judgment in favor of Petitioners.[394] Respondents elected not to appeal the Commonwealth Court's ruling,[395] and various Commonwealth parties have signaled that they intend to use a pre-existing state commission—the Basic Education Funding Commission—as a vehicle for bringing the system into compliance.[396]

The ultimate goal of *William Penn*—ensuring constitutionally sufficient resources for every child in the Commonwealth—is an ambitious one. But as the court emphasized, recalling a John F. Kennedy quote offered by Executive Respondents' counsel at the final oral argument:

> We choose to go to the moon in this decade and do the other things, not because they are easy, but because they are hard, because that goal will serve to organize and measure the best of our energies and skills, because that challenge is one that we are willing to accept, one we are unwilling to postpone, and one which we intend to win, and the others, too.[397]

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[393] *Id.*

[394] *Id*.

[395] Maddie Hanna, *Pa. lawmakers won't appeal the landmark school funding decision*, PHILA. INQUIRER (June 24, 2023, 11:34 AM), https://www.inquirer.com/education/pa-school-funding-decision-appeal-lawmakers-20230724.html.

[396] Joanna McClinton & Eric Becoats, *The work starts now: It's time to make Pennsylvania's education promise a reality*, PENN LIVE PATRIOT NEWS (June 4, 2023, 8:46 AM), https://www.pennlive.com/opinion/2023/06/the-work-starts-now-its-time-to-make-pennsylvanias-education-promise-a-reality-opinion.html; Justin Sweitzer, *A Q&A with Khalid Mumin*, FIRSTREAD, (Aug. 23, 2023), https://www.cityandstatepa.com/personality/2023/08/q-khalid-mumin/389768/.

[397] President John F. Kennedy, President of the U.S., Address at Rice University on the Nation's Space Effort (Sept. 12, 1962), *available at* https://www.rice.edu/kennedy.

It will not take a miracle of scientific advancement to bring Pennsylvania's school funding system into compliance, but rather the will, expressed by Thaddeus Stevens in his 1835 speech and carried forward by the Commonwealth Court in its 2023 ruling, 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 ensure once and for all "that the blessing of education shall be conferred on every [child] of Pennsylvania[.]"[398]

[398] Hon. Thaddeus Stevens, Famous Speech of Hon. Thaddeus Stevens of Pennsylvania in Opposition to the Repeal of the Common School Law of 1984 (April 11, 1835), *in* THE THADDEUS STEVENS MEMORIAL ASSOCIATION OF PHILADELPHIA, 1904, at 12.