

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

WILLIAM PENN SCHOOL DISTRICT, *et al.*,

No. 46 MAP 2015

Appellants,

v.

PENNSYLVANIA DEPARTMENT OF
EDUCATION, *et al.*,

Appellees.

PRAECIPE FOR ENTRY OF APPEARANCE

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PRAECIPE FOR ENTRY OF APPEARANCE

TO: Supreme Court of Pennsylvania
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Dated: September 18, 2015

Respectfully submitted,

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Appellees.

Appeal from the Order of the Commonwealth Court of Pennsylvania entered on April 21, 2015 at No. 587 M.D. 2014, Sustaining the Preliminary Objections and Dismissing the Petition for Review.

Joint Brief of the Consortium for Public Education, Parents United for Public Education, Philadelphians Organized to Witness, Empower and Rebuild (POWER), Youth United for Change, the Philadelphia Student Union, the PA Immigration and Citizenship Coalition (PICC), Parent Education and Advocacy Leadership Center (PEAL), and Caucus of Working Educators, as AMICI CURIAE in Support of APPELLANTS WILLIAM PENN SCHOOL DISTRICT, *et al.*

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INTRODUCTION

This Court's decision will determine the future of hundreds of thousands of Pennsylvania schoolchildren, and of their parents and teachers.

Will this Court require the legislature to fulfill its constitutional duty to "provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth," PA. CONST. art. III, § 14, or will the court allow hundreds of thousands of schoolchildren to languish in overcrowded classrooms with too few teachers, outdated textbooks, lack of guidance counselors, language instructors and other support staff, and no access to technology, electives, art, music and after-school programs?

Will this Court require the legislature to fulfill its constitutional duty to fund the Commonwealth's public schools, or will it destine hundreds of thousands of schoolchildren to failure because their schools lack the resources to meet the rigorous content and curriculum requirements that the legislature has established?

Will this Court order the legislature to fund our schools with at least the minimum needed to provide even a basic education, or will parents have to watch helplessly as their children struggle in underfunded, understaffed and under-resourced schools that prepare them only for a bleak future on the periphery of society?

When the legislature fails to live up to its Constitutional responsibilities, this Court has to step in. On behalf of the hundreds of thousands of young people in underfunded schools across the state, *amici* urge this Court to enforce the constitutional promise of “a thorough and efficient system of public education.”

STATEMENT OF INTEREST OF *AMICI CURIAE*¹

➤ **The Consortium for Public Education** represents public school students and parents in more than 40 districts across seven western Pennsylvania counties, many in very poor communities, such as Clairton City, Monessen City and Wilksburg. Without adequate funding for public schools, the children in these economically distressed communities will grow up ill-equipped for careers, citizenship and lifelong learning.

➤ **Parents United for Public Education (Parents United)** is a parent-led organization working to ensure a baseline level of resources, services and staffing in the public schools.

➤ **Philadelphians Organized to Witness, Empower and Rebuild (POWER)** is an interracial grassroots organization comprising forty dues-paying congregations that represent 30,000 Philadelphians. POWER works to alleviate

¹ No party to the appeal has paid in whole or in part for the preparation of this brief.

poverty. Because inadequate education causes endemic poverty, POWER is focused on improving the education offered by the public schools of Philadelphia.

➤ **Youth United for Change (YUC)** is comprised of African American and Latino students who live in impoverished neighborhoods of North Philadelphia and attend schools that desperately need more staff and more resources, as well as significant repairs to their physical plants. YUC's members are substantially disadvantaged because of the inadequate funding of the Philadelphia public schools.

➤ **The Philadelphia Student Union (PSU)** is comprised of low-income students of color attending Philadelphia's most impoverished schools. PSU's members have first-hand experience with the obstacles and challenges students face on a daily basis as a result of inadequate school funding.

➤ **PA Immigration and Citizenship Coalition (PICC)**² represents the interests of thousands of refugee and immigrant children in numerous school districts across the Commonwealth. If these children are deprived of an adequate education, their entire lives may well be spent on the margins of American society.

² PICC is Pennsylvania's only statewide immigrants' rights coalition. Its members include grassroots community groups, faith communities, labor unions, advocacy organizations, service providers, immigrants and concerned individuals.

➤ **Parent Education and Advocacy Leadership Center (PEAL)** is comprised of parents of children with special health care needs and disabilities. The members of this organization have unique insight into the challenges of providing adequate support for students with special needs.

➤ **Caucus of Working Educators** consists of counselors, nurses, teachers, para-professionals, non-teaching assistants (“NTAs”), secretaries, psychologists, librarians, and support staff within the city of Philadelphia. Without adequate school funding, the organization’s members cannot possibly do their jobs.

SUMMARY OF ARGUMENT

Recognizing the importance of education to the Commonwealth’s future success, the Pennsylvania Constitution mandates “the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.” PA. CONST. art. III, § 14.

Over the course of the past decade, the legislature has acted irresponsibly – or worse. It has carefully defined the curriculum and proficiency standards for “a thorough and efficient system of public education to serve the needs of the Commonwealth,” and called on school districts across the state to meet those standards, but at the same time, the legislature has cruelly deprived those same school districts of the basic resources that they need to achieve the legislated

standards. Indeed, in the midst of the significant budget cuts of 2010, while the legislature was slashing school funding even more, it was simultaneously raising academic standards and imposing punishments for students, teachers, principals and schools that fail.

This Court has the power and authority to order the legislature to fulfill its constitutional responsibilities. *Amici* urge this Court to use that power and authority here.

ARGUMENT³

I. Education Will Define the Future of Our Children.

Education substantially determines whether a child will succeed in life. As the United States Supreme Court stated 60 years ago, “it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.” *Brown v. Board of Education*, 347 U.S. 483, 493 (1954). Hence, “education is perhaps the most important function of state and local governments.” *Id.* Because of its importance, “public education is a fundamental right” established by Article III, Section 14 of the Pennsylvania Constitution.

Wilksburg Educ. Ass’n. v. Sch. Dist. of Wilksburg & Bd. of Sch. Dirs. of the Sch. Dist. of Wilksburg, 542 Pa. 335, 323 (Pa. 1995).

³ The Court may take judicial notice of adjudicative facts, which include facts about the events, persons and places relevant to the matter before the Court. *See* Pa.R.E. 201.

Adequately educating the children of Pennsylvania may be costly, but not as costly as condemning hundreds of thousands of young people to unproductive lives. “If you think education is expensive, try ignorance.”⁴ Children who receive an inadequate education become adults who strain our network of social services and challenge our justice system. As Mark Twain observed, “Every time you stop a school, you will have to build a jail.”⁵

II. The Courts Can Determine Whether the Legislature Has Met Its Constitutional Obligation.

In 1999, when this Court last considered a constitutional challenge to Pennsylvania’s system for funding public education, the legislature had not set any concrete standards for the Commonwealth’s public schools. *See Marrero by Tabales v. Com.*, 709 A.2d 956, 964 (Pa. Commw. Ct. 1998) *aff’d sub nom. Marrero ex rel. Tabalas v. Com.*, 559 Pa. 14, 739 A.2d 110 (1999). Standards were vague and amorphous; there were no clear content definitions, proficiency requirements or mandated consequences for students, teachers, principals and

⁴ Attributed to Derek Bok (former president of Harvard University), among others. *See, e.g.*, Michael A. Gerber, President of the Atlanta Regional Council for Higher Education (ARCHE), Remarks at the ARCHE Board Chair’s Dinner, Zoo Atlanta (May 18, 2010), *available at* <http://www.atlantahighered.org/Newsroom/FeatureStoryDetail/tabid/604/xmid/1616/Default.aspx> (attributing quote to Derek Bok).

⁵ Mark Twain, Address at a Meeting of the Berkeley Lyceum, New York (Nov. 23, 1900), *available at* <http://www.gutenberg.org/files/3188/3188-h/3188-h.htm>.

schools who failed to meet those standards. For this reason, the Commonwealth Court concluded in 1999 that it could not “define the specific components of a ‘thorough and efficient education.’” *Marrero by Tabales v. Com.*, 709 A.2d at 964, and this Court affirmed the judgment of the Commonwealth Court.

Since 1999, everything has changed. The legislature *has* enacted concrete, detailed standards for what teachers need to teach and what students need to learn. Moreover, the General Assembly *has* figured out how much it costs to provide the adequate education that meets the legislated standards. That amount was determined by the legislature in 2008 based on a costing-out study and the current cost can be determined again based on today’s more rigorous standards. *See, e.g.*, 24 P.S. § 25-2502.48. Hence, there is no longer any lack of clarity about what constitutes a “thorough and efficient system . . . to serve the needs of the Commonwealth” and what level of school funding is needed to achieve it.

Whereas in 1999, this Court and the lower courts might have had to define curriculum, proficiency and funding standards on their own, the Court now need only determine whether the current state funding scheme is sufficient to achieve the standards that the legislature itself has already defined.

This Court has not shirked its duty to determine whether the legislature has provided adequate funding for the state judiciary, *see Pennsylvania State Ass'n of*

Cnty. Comm'rs v. Com., 617 Pa. 231, 234-51, 52 A.3d 1213, 1215-25 (2012), and there is no reason for the Court to act differently here. This Court has the authority and the power to determine whether the legislature has provided adequate funding for the Commonwealth's public schools.

III. The General Assembly Has Adopted Rigorous Standards That Define an Adequate Education.

The following subsections A – E show how the legislature in recent years has defined the standards for an adequate education.

A. Pennsylvania System of School Assessment (PSSA)

The Pennsylvania System of School Assessment (PSSA) is an annual, standards-based, criterion-referenced assessment that tests student proficiency in reading, writing, math, and science. Pennsylvania students in grades 3 through 8 are assessed for proficiency in English language arts and math, as well as in science and technology. Students in grades 4 and 8 are tested in environment and ecology. 22 PA. CODE § 4.51a(c). Levels of proficiency are categorized as (i) advanced; (ii) proficient; (iii) basic; and (iv) below basic. 22 PA. CODE § 4.51a(a)(4).

B. PA Core Standards

In 2013, Pennsylvania adopted more rigorous PA Core Standards that mandate what students should know and be able to do in each subject area, in each

school year, in order to prepare students for college and the work force. When the PA Core Standards were officially approved in the autumn of 2013, the Pennsylvania Department of Education (PDE) began transitioning to the new standards by developing brand new curriculum. In addition to requiring new curriculum, teaching to these standards requires new professional development training for teachers and staff, as well as additional student and teacher resources to supplement the new curriculum.

The 2014-2015 school year was the first time that the PSSA fully reflected the requirements of the updated PA Core Standards. In addition to adjusting the tests to match the new standards, the State Board of Education voted to change scoring metrics—raising the bar on which scores constitute a proficient (or passing) rating. According to a preliminary analysis, overall scores fell by 35.4 percent in math and 9.4 percent in English Language Arts.⁶

Even before the PSSA was modified to reflect stricter PA Core Standards, a significant percentage of students were consistently unable to perform at a proficient level. Based upon 2011–2012 statewide testing data, 71.94% of districts

⁶ Kevin McCorry, *Pa. says 2015 standardized test scores dropped precipitously because of added rigor*, NEWSWORKS (July 14, 2015), <http://www.newsworks.org/index.php/local/education/84114-pa-says-2015-standardized-test-scores-dropped-precipitously-because-of-added-rigor>.

reporting test results fell short of the adequacy level in reading and 38.48% fell short of the proficiency level in math; 38.48% of districts failed to reach the adequacy level in both math and reading.⁷ Similarly, 2012–2013 statewide testing data shows that 32.46% of districts reported test results were not at the adequacy level in reading, 29.66% were not at the adequacy level in math, and 26.25% were not at the adequacy level in both math and reading.⁸

C. Keystone Exams

The Keystone Exams are end-of-course assessments designed to assess proficiency in three subjects: Algebra I, Literature and Biology. The Keystone Exams are one component of Pennsylvania’s system of high school graduation requirements. Currently, all high school students take the Keystone Exams. Students who score below proficient on the exams are required to participate in remediation and are given the opportunity to demonstrate proficiency using a project-based assessment. Students who do not demonstrate proficiency in the three tested subjects using either method still may graduate if they meet all local

⁷ See Petition, *William Penn Sch. Dist., et al. v. Pennsylvania Dept. of Educ., et al.*, No. 587 MD 2014, at ¶ 158 (Pa. Commonw. Nov. 10, 2014) (hereinafter “Pet.”).

⁸ See Pet. ¶ 159.

graduation requirements and receive approval from the district's superintendent.⁹

Beginning with the class of 2017, achieving proficiency or higher on the Keystone Exams (or an equivalent project-based assessment) will be a graduation requirement for all Pennsylvania students.

D. Student Services and Resources

In addition to comprehensive academic standards, school districts are also mandated to provide specific basic services and resources to students, 24 P.S. § 11-1123(c) at ¶¶ 116-18, including providing a sufficient number of educational personnel, as well as specific programs and learning experiences in compliance with the School Code. *Id.* at ¶¶ 117-18.

E. Accountability

To ensure that the newly defined standards are met, the General Assembly has created consequences for teachers and schools if students fail to meet the defined standards. For example, every Pennsylvania public school is graded with a “School Performance Profile” (SPP) that is posted on a public website maintained

⁹ New legislation may provide for delayed implementation of the Keystone Exam graduation requirement. Kathy Boccella, *Pa. Senate approves delay in Keystone exams*, PHILLY.COM (June 17, 2015), http://articles.philly.com/2015-06-17/news/63488405_1_keystone-exams-pennsylvania-core-high-school-students.

by the State.¹⁰ Approximately 90% of each school's SPP score is directly attributable to how students perform on the Keystone exam and the PSSA.¹¹

Similarly, in 2012, the PA School Code was amended to require, for the first time, the use of student performance data in teacher evaluations. Beginning in the 2013-2014 school year, at least 50% of a teacher's rating was based on a combination of how well their students, as well as all students in the school, perform, including performance on the PSSA.¹² *See* 24 P.S. § 11-1123(b). Beginning in the 2014-2015 school year, 50% of each principal's rating is also based on student performance—in large part, performance on the PSSA and Keystone exams. *See* 24 P.S. § 11-1123(c).

IV. Extreme Lack of Funding Has Led to Appalling Conditions in Underfunded Schools.

Even though the legislature has now defined a series of standards with strict consequences for failure to meet those standards, teachers struggle to teach to the standards and students struggle to pass the PSSA and the Keystone exams. If the

¹⁰ *See* PENNSYLVANIA SCHOOL PERFORMANCE PROFILE, www.paschoolperformance.org (last visited September 11, 2015).

¹¹ *See id.*

¹² The remaining 50% of teacher ratings are based upon traditional metrics, such as classroom observations, compliance with planning and preparation, and skills at maintaining the classroom environment, providing instruction and other professional responsibilities.

Keystone exams are implemented as planned, many students may leave high school without a diploma, hindering their ability to enter the workforce or “serve the needs of the Commonwealth,” as referenced in the Education Clause. PA. CONST. art. III, § 14. The consistent failure of so many students in low-wealth districts to meet state standards shows that the existing system of public education is neither thorough nor efficient.

It is no mystery why so many school districts are unable to meet the legislated standards: severe underfunding. The underfunding of public schools inexorably leads to schools, teachers and students failing to achieve the standards that the legislature has adopted.

Every day, hundreds of thousands of Pennsylvania students suffer in underfunded, substandard schools. *Amici* organizations have witnessed the impact of the budget cuts on schools and students. The Affidavit of Amy-Nicole Roat, of the Caucus of Working Educators, attached hereto as Exhibit A, provides some examples of how funding cuts have impacted Philadelphia schools:

- Because of funding cuts and the personnel reductions that followed, each teacher is now responsible for an unmanageable number of students. When 30 or more students are crowded into a classroom, distraction is inevitable for even the most motivated student and individualized attention and small group instruction are close to impossible.

- Because of funding cuts, students don't even have up-to-date textbooks. For example, a teacher at the Philadelphia High School for Creative and Performing Arts was forced to use a Math textbook in 2014-2015 that suburban high schools had used in 2005.
- Because of funding cuts, teachers are forced to juggle their traditional duties with new responsibilities. Teachers still have to prepare and teach lesson plans and manage overcrowded classrooms, but they now must also take on the roles of other school professionals. Teachers are required to teach multiple subjects, monitor hallways during class transitions, escort students to restrooms and even provide medical care when nurses are unavailable—all at the cost of lost preparation and instruction time.
- Because of funding cuts, English as a Second Language (ESL) teachers are now scarce. ESL students are already faced with the daunting need to learn a new language and assimilate to a new culture, but with fewer ESL teachers, these students have only limited assistance, or none at all.
- Because of funding cuts, school buildings are falling into disrepair. A hole in a ceiling of the Roosevelt Middle School remained unfixed for at least six years, for example, so whenever it rained, water dripped into a classroom filled with computers.
- Because of funding cuts, classrooms often have only those few school supplies that teachers themselves pay for out of their own pockets. Some teachers receive only \$100 (taxable) for an entire year's worth of supplies, so they have no choice but to spend their own money to ensure that students have pencils, markers, and even paper. One teacher even purchased her own photocopier.
- Because of funding cuts, students and parents eager to engage with their schools are unable to do so because there are no extracurriculars, sports, electives or parent outreach programs. At Central High School, for example, ambitious students once had the opportunity to take an additional elective class, in lieu of physical education. Due to funding and personnel cuts, the opportunity is no longer available.

- Because of funding cuts, significantly fewer school counselors are available, and students are falling through the cracks. Counselors at Central High School previously identified at-risk students who were failing multiple classes early in the semester, contacted parents, arranged meetings, and brainstormed solutions. Once the number of counselors was reduced from eight to only two, however, the counselors no longer had the time to proactively reach out to failing students. Fewer college representatives now visit the school, and the waiting time for college advising appointments has increased fourfold. With fewer counselors available, students who do not request assistance are simply overlooked.

Severe underfunding like that described in Exhibit A afflicts impoverished school districts schools across the state¹³—from Mount Carmel Area School District (Northumberland County) to Juniata County School District (Juniata County), from Beaver Area School District (Beaver County) to the Moshannon Valley School District (Clearfield County). Statistical examples of the impact of underfunding include:

- **Too few teachers:** In 2013-14, 75% of school districts statewide were forced to reduce instructional programming, 47% had to increase class size, 22% were compelled to reduce or eliminate programs that provide extra help or tutoring for struggling students, and 13% had to eliminate summer school programs that allowed students to make up academic credit that allowed students to move to the next grade level or to graduate on time. The School District of Philadelphia, the largest district in the state, eliminated 7,588 positions for the 2014-2015

¹³ See Brian Wallace, *Three of four school districts in state say they'll cut programs to help balance budgets*, LANCASTERONLINE (Jun. 7, 2013), http://lancasteronline.com/news/three-of-four-school-districts-in-state-say-they-ll/article_40eefe64-6e59-5747-8423-32cec6424197.html. School districts across the state have had to eliminate and/or reduce academic programs, furlough teachers, lay off other staff and increase class size.

school year (nearly one-third of its 2010-2011 workforce of 23,762),¹⁴ leaving 131,000 students in 214 schools served, for example, by a mere three full-time equivalent librarians and zero (0) gifted education teachers. The School District of Lancaster has similarly been forced to eliminate over 100 teaching positions and more than 20 staff positions.¹⁵ In one school, reductions in staff mean that on one floor filled with 200 seventh and eighth graders, one of two restrooms remains locked because there are not enough hall monitors.¹⁶

- **Alarming levels of overcrowding:** In some schools, classrooms are so crowded that teachers cannot even walk between desks to interact with individual students.¹⁷ This problem is so severe that it is forcing at least one school district to consider making classrooms out of

¹⁴ See Press Release, Pennsylvania Association of School Business Officials, PASBO/PASA Release Budget Survey Results (June 5, 2013), *available at* <http://pennbpc.org/sites/pennbpc.org/files/PASBO-PASA-Survey-Schools-2013.pdf>. The staff reductions included 180 principals or assistant principals (40% reduction), 3,519 total teachers (33% reduction), 417 Special Education teachers (22% reduction), 185 Career and Technical Education teachers (37% reduction), 48 teachers of English-language learners (14.7% reduction), 412 counsellors, student advisors, or social service liaisons (54% reduction), 424 noontime aides (25% reduction), 318 secretaries (51% reduction), 726 supportive service assistants (60% reduction), 79 school police officers (23% reduction) and 104 school nurses (35% reduction).

¹⁵ See Pet. ¶¶ 181–84.

¹⁶ Motoko Rich, *Philadelphia Teachers Hit by Latest Cuts*, N.Y. TIMES (Oct. 14, 2014), <http://www.nytimes.com/2014/10/15/us/philadelphia-teachers-hit-by-latest-cuts.html>.

¹⁷ See Petition, *Allen v. Dumaresq*, No. 474 MD 2014, at 7 (Pa. Commonw. Sept. 9, 2014), *available at* <http://www.pilcop.org/wp-content/uploads/2014/08/14.09.09-Allen-Petition-for-Review-without-exhibits.pdf>.

school libraries.¹⁸ Yet it is well documented that smaller class sizes make a profound difference in adequately educating a child.¹⁹

- **Lack of basic textbooks:** In some schools, pupils have to share basic textbooks, and cannot take textbooks home or do not have access to updated textbooks at all.²⁰ For example, in a sixth-grade math class of 33 students, there are only 11 textbooks available, so the teacher rations paper used to print out homework equations.²¹
- **Lack of other essential instructional materials:** Many students do not have adequate access to instructional equipment, including computers, software, and internet access; audio-visual equipment and resources; and instructional materials, such as workbooks and library books.²²

¹⁸ Russ O'Reilly, *AASD leader addresses overcrowded schools*, THE ALTOONA MIRROR (Jan. 7, 2015), <http://altoonamirror.com/page/content.detail/id/601947/AASD-leader-addresses-overcrowded-schools.html?nav=742> (detailing problems resulting from overcrowding in the Altoona Area School District).

¹⁹ Smaller classes allow teachers to individualize instruction and effectively address student learning problems. See Blatchford, P., Bassett, P. & P. Brown, "Do Low Attaining and Younger Students Benefit Most from Small Classes? Results from a systematic observation study of class size effects on pupil engagement and teacher pupil interaction," (2008) (paper presented at the American Educational Research Association Annual Meeting, New York, NY). Smaller class sizes thus have a significant impact on student achievement, including higher test scores. The impact is particularly clear among African American students and students living in poverty. One study found that reducing classes from 22 to 15 students in the early elementary years could reduce the black/white test score gap by 38 percent. See Krueger, A. & Whitmore, D., "Would smaller classes help close the black/white achievement gap?" in J. Chubb and T. Loveless (eds.), *Bridging the Achievement Gap*, Washington, DC: Brookings Institute Press (2002).

²⁰ See, e.g., Pet. ¶¶ 241–43 (detailing William Penn School District's lack of funding to purchase up-to-date textbooks that meet the requirements of the Pennsylvania Common Core).

²¹ Motoko Rich, *Philadelphia Teachers Hit by Latest Cuts*, N.Y. TIMES (Oct. 14, 2014), <http://www.nytimes.com/2014/10/15/us/philadelphia-teachers-hit-by-latest-cuts.html>.

²² See Report, Campaign for America's Future & National Education Association, *Starving America's Public Schools: How Budget Cuts and Policy Mandates are Hurting our Nation's Students at 35*, available at <http://ourfuture.org/files/documents/starving-schools-report.pdf>.

- **Minimal extra-curricular and after-school activities:** Forty percent of districts responding to the 2014 PASA-PASBO survey eliminated or reduced a total of 261 extra-curricular programs between 2010 and 2011 and 2013 and 2014. Approaching 2014-2015, 28 percent of the districts that participated in the survey were poised to cut or curtail 172 programs. In high poverty districts, 68 percent of students are affected by these eliminations and reductions. Meanwhile, 20 percent of responding districts have implemented fees for participation in 134 extra-curricular programs.²³
- **Few advanced-level math and science programs and foreign language courses:** Thirty-seven percent of school districts plan to eliminate or have already reduced courses in subjects such as advanced-level math and science programs and foreign language courses. Greater Johnstown School District, for example, has been forced to cut myriad programs, including art, foreign languages, vocational training, science labs, special education, after-school programs, translation and interpretation services for English Language Learners, and remediation and intervention services.²⁴ In high poverty school districts, these types of cuts affect 90 percent of students.²⁵
- **Few music, art and physical education courses:** In one school district in Butler County, elementary schools that previously held art, music, and physical education classes twice every six days were

²³ See Budget Report, Pennsylvania Association of School Administrators & Pennsylvania Association of School Business Officials, *Continued Cuts: The Fourth Annual PASA-PASBO Report on School District Budgets at 5–6* (June 2014), *available at* <http://archive.pasbo.org/2014%20PASA%20PASBO%20Report%20on%20School%20District%20Budgets.pdf> (hereinafter “PASA-PASBO Report”).

²⁴ See Pet. ¶¶ 213–19 (listing Greater Johnstown School District’s programming cuts).

²⁵ See Mary Niederberger, *Report shows sharp cuts in Pennsylvania school programs due to funding shortfalls*, PITTSBURGH POST-GAZETTE (Jun. 5, 2013), <http://www.post-gazette.com/news/education/2013/06/05/Report-shows-sharp-cuts-in-Pennsylvania-school-programs-due-to-funding-shortfalls/stories/201306050159>.

forced to reduce those offerings to once every five days.²⁶ Not only does this reduction harm students, but it also harms academic teachers who have less time for planning and professional development because students do not leave the classroom for electives.²⁷

- **Little instruction in English as a Second Language:** Tens of thousands of refugee and immigrant children face especially difficult challenges in obtaining an adequate education. To make matters worse, these children are overwhelmingly concentrated in the districts that are most under-funded, such as Philadelphia, Reading, Chester Upland and Allentown. Without adequate English as Second Language (ESL) programs, these children cannot possibly master substantive subjects, such as math or science. Severely limited access to bilingual counselors, which is the case in many school districts, only exacerbates the problem. Language problems can also impact the ability of immigrant and refugee parents to support their children's education; it is the children who suffer the consequences, for example, when schools cannot provide interpreters at parent-teacher meetings.²⁸
- **No access to guidance counselors:** The absence of guidance counselors can be devastating for children dealing with emotional

²⁶ See Mary Niederberger, *School districts must make do after funding cuts of \$1 billion*, PITTSBURGH POST-GAZETTE (Aug. 28, 2011), <http://www.post-gazette.com/news/education/2011/08/28/School-districts-must-make-do-after-funding-cuts-of-1-billion/stories/201108280279>.

²⁷ See Sara Neufeld, *Are Pennsylvania students being set up for failure? New education standards, graduation exams highlight school resource needs*, THE HECHINGER REPORT (Oct. 15, 2013), <http://hechingerreport.org/are-pennsylvania-students-being-set-up-for-failurenew-education-standards-graduation-exams-highlight-school-resource-needs>.

²⁸ See Eleanor Chute, *Pennsylvania student scores declined with reduced funding, test results show*, PITTSBURGH POST-GAZETTE (Nov. 21, 2014), <http://www.post-gazette.com/news/education/2014/11/21/State-student-scores-declined-with-reduced-funding-test-results-show/stories/201411240030>.

trauma, *e.g.*, the death of a parent or fellow student, and can make it impossible for these children to perform well in school.²⁹

- **No access to college and career counselors:** At one high school, a single counselor was assigned to 800 students and asked to assist 182 seniors with college applications.³⁰ Students with college potential often need the guidance of counselors to actually get to college, but the schools do not have enough counselors. One senior at Bodine High School reported that “[t]he counselor comes for a half-day and then one day after school. That doesn’t help us much With seniors especially—we have no help with college things at all Give us the tools we need in order to go to college.”³¹ Similarly, a senior at Academy at Palumbo High School complained “[w]e have one [guidance counselor] for two hundred seniors — which is crazy. We used to have three, then budget cuts came.”³²
- **No school nurses:** The vast majority of school nurses surveyed in one school district (more than 70 percent) reported a marked reduction in school nursing staff or staff time in schools, as nurses are required to “cover” two, three, or more school buildings. They reported that children with chronic health conditions requiring daily maintenance are the most significantly impacted group, followed by children whose families do not have health insurance, children with multiple disabilities, children whose parents are unable to go to school to

²⁹ See Petition, *Allen v. Dumaresq*, No. 474 MD 2014 at 4, 9 (Pa. Commonw. Sept. 9, 2014), available at <http://www.pilcop.org/wp-content/uploads/2014/08/14.09.09-Allen-Petition-for-Review-without-exhibits.pdf>.

³⁰ See Sharon Ward, Director of the Pennsylvania Budget and Policy Center, Report: A Strong State Commitment to Public Education, A Must Have for Pennsylvania’s Children (Apr. 2014), available at <http://pennbpc.org/sites/pennbpc.org/files/20140429schoolreport.pdf>.

³¹ Interview with Emyluz, 17, a senior at Bodine High School (Philadelphia County), “No Counselor” (Nov. 12, 2013), available at <http://www.hear-me.net/stories/7244>.

³² Interview with Chris, 17, a senior at Palumbo High School (Philadelphia County), “We lost guidance counselors to budget cuts” (Dec. 3, 2014), available at <http://www.hear-me.net/stories/8333>.

administer medications, and children whose families lack financial resources. Medications and/or treatments were being administered by teachers or aides. An article recently published in the New York Times reported as follows: “Money is so short at Feltonville School of Arts and Sciences, a public middle school here, that a nurse works only three afternoons a week, leaving the principal to oversee the daily medication of 10 children, including a diabetic who needs insulin shots. Fifty-two percent reported that children are *not* receiving urgent medical care. Thirty-six percent stated that children do not receive their treatments at prescribed intervals. Thirty percent noted that children do not receive evaluations for a disability in a timely manner. One respondent noted, “Last month my school principal called 911 three times. The three incidents could have been handled by the school nurse.”³³ In other cases, the absence of a school nurse has had deadly consequences.³⁴

- **Harsh disciplinary policies that do more to push students out of school than maintain order in the building and that fail to teach students appropriate conduct with proven interventions:** As with nursing staff cuts, reductions in the number of school guidance counselors, social workers and behavioral specialists leave students without valuable resources. A lack of these resources has too often

³³ Report, Education Law Center, *The School Nurse Shortage in Philadelphia* at 4 (May, 2013), available at http://www.elc-pa.org/wp-content/uploads/2014/01/ELC_SchoolNurseReport_May2013.pdf.

³⁴ *Id.* In one case, a Philadelphia sixth-grader died from an asthma attack after funding cuts to the nation’s eighth largest school district left most children in that district bereft of full-time school nurses who know what to do during an attack of a life-threatening disease. Teachers at the school were not trained to discern the severity of her condition, and there was no school nurse to intervene. Tragically, the student was sent home and died on the way to the emergency room later that day. See Jeff Bryant, “*School nurse cuts killed my daughter*”: *Laporshia Massey died because our priorities are wrong*, SALON (Oct. 18, 2013), http://www.salon.com/2013/10/18/school_nurse_cuts_killed_my_daughter_laporshia_massey_died_because_our_priorities_are_wrong/; see also Denisa Superville & Evie Blad, *Philadelphia Tragedy Highlights Role of School Nurses*, EDUCATION WEEK (Jun. 2, 2014), http://www.edweek.org/ew/articles/2014/06/04/33philly_ep.h33.html (reporting the death of a Philadelphia elementary student who felt ill at a school that did not have a full-time nurse on duty).

prompted schools throughout Pennsylvania to rely on police in the role of school disciplinarians, referring students involved in even minor behavioral matters or confrontations to the police for action in the courts.³⁵

- **Dangerous school buildings:** At an average age of 63 years old, the school buildings in Philadelphia, like other school districts, are beset with issues familiar to any owner of an old house, including mold, lead paint, and asbestos. As a result, a study last year in the *Journal of Asthma* found that Philadelphia children suffered from asthma at three times the national average. Mold and dampness problems are so severe in Philadelphia that the National Institute for Occupational Safety and Health joined with the district and union two years ago to develop a computerized tool for assessing these problems.³⁶ Outside of Philadelphia, other schools face similar issues in dilapidated buildings. In Reading, for example, on one of the coldest days of winter, a class of kindergartners sat shivering in their 40-degree elementary school classroom wearing their coats and hats. The school had only one operating boiler, and there was no money to fix the

³⁵ See Report, Youth United for Change & Advancement Project in consultation with the Education Law Center, *Zero Tolerance in Philadelphia: Denying Educational Opportunities and Creating a Pathway to Prison at 7–8* (Jan. 2011), available at <http://www.atlanticphilanthropies.org/sites/default/files/uploads/Zero%20Tolerance%20in%20Philadelphia%20%282%29.pdf>; Report, American Civil Liberties Union of Pennsylvania, *Beyond Zero Tolerance: Discipline and Policing in Pennsylvania Public Schools at 7–8* (Nov. 2013), available at http://www.aclupa.org/files/7713/8435/5077/BZT_Report_11-14-13.pdf.

³⁶ See Dylan Purcell & Kristen A. Graham, *State of Phila.'s school buildings is a worry, too*, *The Philadelphia Inquirer* (Nov. 11, 2013), http://articles.philly.com/2013-11-11/news/43889665_1_health-hazards-philadelphia-school-district-school-buildings; see also Daniel Denvir, *Philly School District blocks a federal study after health risks are exposed*, *Philadelphia CityPaper* (May 8, 2014), <http://citypaper.net/News/Philly-School-District-blocks-a-federal-study-after-health-risks-are-exposed/> (reporting that the School District of Philadelphia has refused to make public the complete findings of a study revealing pervasive dampness, mold, and water damage in Philadelphia school buildings).

other. Whole sections of the school were thus literally left out in the cold.³⁷

Amici parents and students have done everything they can to alert the state to these deficiencies, but their complaints have been ignored. In September 2013, Philadelphia parents submitted over 825 complaints to the PDE documenting dire school conditions. The complaints covered 40% of schools, and alleged problems included alarming levels of overcrowding in classrooms, lack of books, limited curricular offerings in violation of state requirements, a distressing lack of school counselors and squalid and insufficient toilet facilities. After one year, the vast majority of parents received a generic form letter or no response at all from the state.³⁸

³⁷ Cindy Long, *Aging Schools Create Dangerous and Fragile Learning Environments*, NEAToday (Mar. 13, 2013), <http://neatoday.org/2013/03/13/aging-schools-create-dangerous-and-fragile-learning-environments-2/>; see also Christine Vendel, *Harrisburg school buildings study finds polluted air being pumped into 1 school*, The Patriot-News (Feb. 2, 2015), http://www.pennlive.com/midstate/index.ssf/2015/02/harrisburg_schools_air_quality.html (detailing serious HVAC problems in Harrisburg school buildings).

³⁸ In response to this inaction, *amici* Parents United for Public Education along with individual parents filed a lawsuit in Commonwealth Court alleging that the Pennsylvania Department of Education (PDE) had violated its legal obligation to investigate allegations of massive curriculum deficiencies. See <http://www.pilcop.org/wp-content/uploads/2014/08/14.09.09-Allen-Petition-for-Review-without-exhibits.pdf>.

V. The Underfunding of Impoverished School Districts Has Created Clear Inadequacies and Gross Disparities Between High-Wealth and Low-Wealth School Districts

How underfunded are Pennsylvania's poorest school districts? The Pennsylvania legislature itself commissioned a study on school funding that found that Pennsylvania's schools in 2005-2006 were spending *\$4.5 billion less than what was needed to meet Pennsylvania's minimal academic standards*.³⁹ That extraordinary deficiency was *even before the recent cuts* to school funding, which have made the situation even more dire.

One can get some sense of how far removed we are from "a thorough and efficient system of public education" by comparing what affluent districts spend on educating their own children with what the poorest districts are able to spend. Compare Lower Merion School District, for example, which spends \$28,400 per pupil per year,⁴⁰ with Mount Carmel Area School District (Northumberland County), for example, which can afford a mere \$9,983 per pupil.⁴¹ That's a

³⁹ Report, Augenblick, Palaich & Assoc., Inc. (Denver, CO), Costing Out the Resources Needed to Meet Pennsylvania's Public Education Goals at 51 (Dec. 2007) (presented to the Pennsylvania State Board of Education).

⁴⁰ Other wealthy school districts, *e.g.*, Council Rock (Bucks County) and Wallingford-Swathmore School District (Delaware County), spend comparable amounts. See "School Spending," OpenPAGov.Org (2013), http://www.openpagov.org/education_revenue_and_expenses.asp.

⁴¹ See *id.* "Per student" is based upon Average Daily Membership ("ADM") as reported by the Pennsylvania Department of Education. ADM refers to "all resident pupils of the school

difference of \$241,800 over the course of a student’s K -12 school career. Every year, Lower Merion spends \$710,000 on the typical classroom of 25 students whereas Mount Carmel Area School District can spend only \$245,000 on a 25-student classroom in its schools—a difference of \$465,000 per year.⁴²

Pennsylvania is ranked as the most inequitable school funding system in the nation.⁴³ Students in Pennsylvania’s low-wealth districts receive 33.5% less funding on average than students in Pennsylvania’s high-wealth school districts.⁴⁴

This statistic is more than double the national average—students in the United

district for whom the school district is financially responsible.” It includes students in charter schools. See “Financial Data Elements,” Pennsylvania Department of Education (2015), http://www.portal.state.pa.us/portal/server.pt/community/financial_data_elements/7672.

⁴² Pennsylvania has the widest gap in per pupil spending between poor and rich school districts in the nation. See Emma Brown, *In 23 states, richer school districts get more local funding than poorer districts*, WASHINGTON POST (Mar. 12, 2015), <http://www.washingtonpost.com/news/local/wp/2015/03/12/in-23-states-richer-school-districts-get-more-local-funding-than-poorer-districts/#graphic>. Pennsylvania’s low-wealth districts have **33.5% less** funding on average than high-wealth school districts. See *id.* That is **more than double** the national average of 15.6%. See *id.*

⁴³ NAT’L CTR. FOR EDUC STATISTICS, Education Finance Statistics Center Table A-1, available at http://nces.ed.gov/edfin/Fy11_12_tables.asp (last visited Sept. 18, 2015); see also Emma Brown, *In 23 states, richer school districts get more local funding than poorer districts*, WASHINGTON POST (Mar. 12, 2015), <http://www.washingtonpost.com/news/local/wp/2015/03/12/in-23-states-richer-school-districts-get-more-local-funding-than-poorer-districts/#graphic>.

⁴⁴ *Id.*

States' low-wealth school districts receive 15.6% less funding than students in high-wealth districts.⁴⁵

Amici are not suggesting that a “thorough and efficient system of public education” requires every school district to be equally well funded, and *amici* certainly do not contend that every school district in Pennsylvania must provide the kind of superior education that Lower Merion can afford to offer. However, it cannot be said that a system that results in the denial of basic resources to low-wealth school districts, precluding children from meeting state standards while widening huge disparities between low-wealth and high-wealth school districts, is the “thorough and efficient system” mandated by the Constitution.

VI. The Need Is Now.

The need for adequate and equitable school funding is now. Tens of thousands of students in Pennsylvania are being harmed each and every day. These students have only one opportunity to receive a meaningful education. Five years from now is irrelevant for these students. Every day that goes by without this Court enforcing the constitutional mandates of the Education Clause and equal protection provisions tragically deprives hundreds of thousands of Pennsylvanian children of a fair chance to have productive lives.

⁴⁵ *Id.*

VII. The Court's Ruling Will Have a Significant Impact on *Amici*.

The students in underfunded public schools have nowhere to turn but this Court. In a perfect world, the General Assembly would have embraced a school funding scheme that fulfills the constitutional mandate and there would be no need for court intervention. However, the General Assembly has not done so and *amici* parents, students and teachers, along with hundreds of thousands of others across the state have suffered the devastating consequences. Therefore, it is this Court that must enforce the Constitution as is its duty.

If this Court affirms the Order of the Commonwealth Court and sustains Appellees' preliminary objections to the Petition for Review, it will mean that the Education Clause is nothing but a bunch of empty words. The Court's failure to act will be tragic for the young people of this Commonwealth.

CONCLUSION

The Pennsylvania Constitution promises a "thorough and efficient system of public education," but the General Assembly has starved our schools of the funds that they need to fulfill that promise. The *amici curiae* urge the Court to reverse the judgment of the Commonwealth Court and to remand to that court, instructing it to overrule the Appellees' preliminary objections and to grant Appellants' request for declaratory and injunctive relief.

Dated: September 18, 2015

Respectfully submitted,

/s/ Fred T. Magaziner

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CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2015, I electronically filed the foregoing with the Clerk of Court for the Supreme Court of Pennsylvania by using the PACFile appellate court electronic filing system.

I further certify that the foregoing was served via First Class Mail upon the following persons:

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Exhibit A

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

WILLIAM PENN SCHOOL DISTRICT,
et al.,

No. 46 MAP 2015

Appellants,

v.

**PENNSYLVANIA DEPARTMENT OF
EDUCATION, *et al.,***

Appellees.

DECLARATION OF AMY-NICOLE ROAT

I, Amy-Nicole Roat, being duly sworn hereby state as follows:

1. I have been a teacher in the School District of Philadelphia for 13 years and have worked as a teacher for over 20 years.
2. I am also a leader of the Caucus of Working Educators and have been a member of that group for 18 months.
3. The Caucus of Working Educators is a network of teachers, counselors, nurses, para-professionals, secretaries, psychologists, librarians, and support staff who work with students in the School District of Philadelphia every day.

4. As a member of the Caucus for Working Educators, I speak often with Caucus members and other public school teachers regarding their work, teaching experiences and the conditions in their schools.
5. This Declaration includes information I have learned through my work as a teacher, a member of the Caucus and information I have obtained through first-hand observations in schools across the School District of Philadelphia.
6. Students and teachers in our school district, and other low-wealth school districts across Pennsylvania have been profoundly impacted by way the Pennsylvania's public schools are currently funded.
7. Due to lack of adequate state funding, including devastating budget cuts that occurred from 2011 to the present, students in our district are in a learning environment where it is nearly impossible for students to successfully attain proficiency on state academic standards.
8. For example, as a direct result of insufficient funding, many classrooms are overcrowded—often with over thirty (30) or more students in each room. Overcrowded classrooms create an environment where it is difficult to provide individualized attention and small group instruction. Even highly

motivated students have difficulty concentrating and struggle to participate due to multiple distractions created by an overcrowded classroom.

9. There are not enough textbooks for every student and most students are not permitted to take their books home. This makes it difficult for students to learn new material, complete homework, memorize information or receive help at home. Schools use old and outdated textbooks. A teacher at the Philadelphia High School for Creative and Performing Arts (CAPA) reported that the Math textbook used in the 2014-2015 school year was the same textbook that was used at a suburban high school in 2005.
10. Extreme underfunding has led to a high number of personnel cuts. To compensate for the cuts, many teachers are tasked with additional duties, including teaching multiple subject areas, monitoring hallways during class transitions, escorting students to the restroom, and providing medical care when a nurse is unavailable. Because teachers have additional responsibilities, they have less prep time and less instructional time with students. Reduced numbers of hall monitors also result in a higher number of students skipping class.
11. Limited funding has led to fewer English as a Second Language (ESL) teachers in the classroom. Students are not provided with the necessary

support, and suffer through class without learning or understanding the material, which is often demoralizing. One teacher reported watching an ESL student simply put his head down and cry during a standardized test.

12. As a direct result of limited financial resources, many school buildings are falling into disrepair. For example, a hole in the roof of a technology classroom containing computers at Roosevelt Middle School in the School District of Philadelphia was not fixed for at least six years. Each time it rained, water leaked through the hole into the classroom.
13. The budget cuts have forced teachers to spend their own money to ensure that their classrooms have adequate resources. Some teachers receive only \$100 (taxable) for a year's worth of supplies. Teachers purchase posterboard, pencils, markers, post-its, copy paper, and have even purchased their own photocopiers. Even though they are not provided with paper, teachers are expected to print their own worksheets and materials to prepare students for state mandated standardized tests.
14. Programs targeting both students and teachers have been eliminated due to limited funding. Because fewer parent-focused programs are offered, parents feel less involved with the schools and their children's education, which has a negative impact on the students' education. Similarly, fewer

athletic programs and electives are available to students, and students likewise are less involved in the school. At Central High School in the School District of Philadelphia (Central), students previously had the option to take an additional elective class instead of a physical education class. The option is no longer available.

15. Significant budget cuts have forced schools to eliminate counselor positions. For example, at Central, the number of counselors has decreased from eight to two, and these two counselors now serve roughly 2,400 students. Because fewer counselors are available, counselors no longer provide proactive interventional services to students who are failing multiple classes throughout the semester. Also due to the reduction in counselors, the number of college representatives that visit Central has decreased from 30-40 to 20-25, and the wait time for an advising appointment has increased from 2-3 days to two weeks. Counselors can no longer provide proactive, critical support to ninth grade students as they transition to high school. The consequence is that students who do not ask for assistance are overlooked and don't receive needed support to be successful or even to stay in school.
16. All of these factors combine to make it extremely difficult or impossible

for students to master content standards set by the State, pass standardized tests such as the PSSAs or Keystone Exams and be prepared to enter the workforce or have the opportunity to attend college.

I declare under penalty of perjury that the foregoing information is true and correct.

A handwritten signature in black ink that reads "Amy-Nicole Roat". The signature is written in a cursive, flowing style.

Amy-Nicole Roat

September 14, 2015