

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

WILLIAM PENN SCHOOL DISTRICT, <i>et al.</i>	:	
	:	
<i>Appellants,</i>	:	
	:	
v.	:	No. 587 M.D. 2014
	:	
PENNSYLVANIA DEPARTMENT OF EDUCATION, <i>et al.</i>	:	
	:	
<i>Appellees.</i>	:	

**BRIEF OF AMICI CURIAE PHILADELPHIA FEDERATION OF
TEACHERS, LOCAL 3, OF THE AMERICAN FEDERATION OF
TEACHERS, AFL-CIO, THE AMERICAN FEDERATION OF TEACHERS
PENNSYLVANIA, AFT, AFL-CIO, AND THE AMERICAN FEDERATION
OF TEACHERS, AFL-CIO, IN SUPPORT OF PETITIONERS' POST-
TRIAL MEMORANDUM**

DEBORAH R. WILLIG, ESQUIRE
Attorney ID No. 21507
RALPH J. TETI, ESQUIRE
Attorney ID No. 21499
JOHN R. BIELSKI, ESQUIRE
Attorney ID No. 86790

WILLIG, WILLIAMS &
DAVIDSON
1845 Walnut Street, 24th Floor
Philadelphia, PA 19103
(215) 656-3600

*Attorneys for Amici Curiae,
PFT, AFT PA, and AFT*

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

I. STATEMENT OF INTEREST OF AMICI CURIAE 1

II. STATEMENT OF QUESTION INVOLVED.....5

III. SUMMARY OF ARGUMENT6

IV. ARGUMENT.....10

 A. The Various Versions of the Education Clause Consistently Recognized the Vital Necessity of Public Education, and Its Current Iteration Demonstrates that Its Framers Understood That Public Education Is a Fundamental Right.....11

 B. The Debates at the Constitutional Convention of 1873 Demonstrate that the Framers of the Education Clause Intended to Create a Constitutional Mandate that the General Assembly Provide for and Fund Quality Public Education14

 C. Pennsylvania Courts Have Acknowledged That Public Education Is Indispensable in a Democracy and a Fundamental Right21

 D. Other State Appellate Courts with a Similar Education Clause as the One Found at Article III, Section 14 Have Enforced Their Respective Provision Against Their State Legislatures, Including Some That Have Held That Their Educational Provision Creates a Fundamental Right25

 E. The Policy Behind the Adoption of the Education Clause Strongly Supports Finding That It Affords a Fundamental Right to a Quality Public Education.....28

V. CONCLUSION.....28

CERTIFICATE OF COMPLIANCE

CERTIFICATION REGARDING PUBLIC ACCESS POLICY

PROOF OF SERVICE

TABLE OF AUTHORITIES

<u>CASES</u>	<u>Page #</u>
<i>Abbott v. Burke</i> , 575 A.2d 359 (N.J. 1990)	30
<i>Campbell Cty. Sch. Dist. v. State</i> , 907 P.2d 1238 (Wyo. 1995)	30, 31
<i>Commonwealth v. Edmunds</i> , 586 A.2d 887 (Pa. 1991)	13
<i>Davis v. State</i> , 804 N.W.2d 618 (S.D. 2011)	30
<i>DeRolph v. State</i> , 780 N.E.2d 529 (Ohio 1997)	30
<i>Kanawha Cty. Pub. Library Bd. v. Bd. of Educ. of Kanawaha</i> , 745 S.E.2d 424 (W.V. 2013)	30
<i>Maryland State Bd. of Educ. v. Bradford</i> , 875 A.2d 703 (Md. 2005)	30
<i>Pa. Ass'n of Rural & Small Sch. v. Ridge</i> , 1998 Pa. Commw. Unpub. LEXIS 1 (Pa. Cmwlth. July 9, 1998)	23
<i>Pa. Human Relations Comm'n v. Sch. Dist. of Philadelphia</i> , 681 A.2d 1366, 1383 (Pa. Cmwlth. 1996)	27
<i>Pauley v. Kelly</i> , 255 S.E.2d 859 (W.Va. 1979)	30, 31
<i>Reichley v. North Penn Sch. Dist.</i> , 626 A.2d 123 (Pa. 1993)	28
<i>San Antonio Independent Sch. Dist. v. Rodriguez</i> , 411 U.S. 1 (1973)	13
<i>Sch. Dist. of Philadelphia v. Twer</i> , 447 A.2d 222 (Pa. 1982)	27, 28
<i>Skeen v. Minnesota</i> , 505 N.W.2d 299 (Minn. 1993)	30
<i>Teachers' Tenure Act Cases</i> , 197 A. 344 (Pa. 1938)	24, 25, 26
<i>Wilkinson Educ. Ass'n v. Sch. Dist. of Wilkinson</i> , 667 A.2d 5 (1995)	26, 27, 28

<i>William Penn Sch. Dist. v. Pa. Dep't of Educ.</i> , 170 A.3d 414 (Pa. 2017)	23, 24, 27
---	------------

CONSTITUTIONAL PROVISIONS

Md. Const., art. VIII, § 1	29
Minn. Const., art. XIII, § 1	29
N.J. Const., art. VIII, § 4, ¶ 1	29
Pa. Const., art. III, § 14	<i>passim</i>
Pa. Const. of 1776, ch. II, § 44	15
Pa. Const. of 1790, art. VII, § 1	15
Pa. Const. of 1838, art. VII, § 1	15, 16
Pa. Const. of 1874, art. X, § 1	<i>passim</i>
Ohio Const., art. VI, § 2	29
S.D. Const., art. VIII, § 15	29
W.V. Const., art. XII, § 1	29
Wyo. Const., art. 7, § 9	29

LEGISLATIVE MATERIALS

Joint Resolution No. 3, 1967, P.L. 1037	16
House, <i>Pa. Legislative Journal</i> (Jan. 30, 1967)	23

OTHER SOURCES

Benjamin Franklin, *Proposal Relating to the Education of Youth in Pennsylvania*
(1749).....14

Debates of Constitutional Convention to Amend the Constitution of Pennsylvania
(1873)*passim*

I. STATEMENT OF INTEREST OF AMICI CURIAE¹

Amicus Curiae, the Philadelphia Federation of Teachers, Local 3 of the American Federation of Teachers, AFL-CIO (“PFT”), is the recognized and sole collective bargaining representative of ten bargaining units at the Philadelphia School District (“PSD” or “District”). Its President and Trustee ad Litem is Jerry Jordan. Within the ten bargaining units are those employees who have direct responsibility for the education and support of the District’s students, including teachers, specialized teachers, remedial teachers, assistant teachers, substitute teachers, librarians, school nurses, counselors, and instructional aides. The PFT represents over 10,000 employees at the PSD

As the exclusive bargaining representative for thousands of employees of the PSD, the PFT has an interest in this action in which Appellants allege insufficient funding has resulted in the inability of school districts, including the PSD, to provide an adequate education for students of the District. The lack of funding has had a direct and adverse impact on the goals and objectives of the PFT. Due to the lack of financial resources, teachers represented by the PFT struggle to provide an adequate education to their pupils in accordance with the Commonwealth of Pennsylvania (“Commonwealth”)’s academic standards. Based on its experience and the

¹ No person or entity other than the three enumerated Amici Curiae or their counsel has paid for the preparation of this brief or authored the brief, in whole or in part.

professional judgment of its members, the PFT asserts that the lack of adequate funding results in the low proficiency testing of students in the PSD and the prevalence of dangerous and unhealthy school facilities.

Amicus Curiae, the American Federation of Teachers Pennsylvania, AFT, AFL-CIO (“AFT PA”), is an intermediary body which supports the activities of AFT locals in Pennsylvania representing educational employees in the Commonwealth, such as the PFT, which is an affiliate of the AFT PA. The President and Trustee ad Litem of the AFT PA is Arther Steinberg. AFT PA represents more than 36,000 members in 57 local affiliates throughout the Commonwealth, including teachers and school-related personnel, health care professionals, higher education faculty members and state employees. Of those 57 local affiliates, approximately 30 represent teachers or support staff in Pennsylvania public schools or intermediate units with a combined membership of over 15,000 members.

Due to its support for these local affiliates in Pennsylvania, AFT PA shares the interest, goals, and objectives of the PFT. Additionally, under its governing constitution, the purpose of AFT PA includes (1) “promot[ing] the welfare of the children and youth of the Commonwealth and . . . provid[ing] better educational opportunities for them”; and (2) rais[ing] the standards of teaching by securing conditions essential to the best professional services.” AFT PA has been actively involved in various legislative efforts to improve the quality of public education in

the Commonwealth, including efforts to increase education funding for the PSD and to provide for a more equitable and adequate system of educational funding throughout the Commonwealth.

Amicus Curiae American Federation of Teachers (“AFT”) is an affiliate of the AFL-CIO, was founded in 1916, and today represents 1.7 million members in more than 3,000 local affiliates nationwide. Its President and Trustee Ad Litem is Randi Weingarten. Both the PFT and AFT PA are affiliates of the AFT. Five divisions within the AFT represent the broad spectrum of the AFT’s membership: pre-K through 12-grade teachers; para-professionals and other school-related personnel; higher education faculty and professional staff; federal, state, and local government employees; and nurses and other healthcare professionals. Additionally, the AFT represents approximately 80,000 early childhood educators and nearly 250,000 retiree members.

As stated in its Mission Statement, the AFT is “a union of professionals that champions fairness; democracy; economic opportunity; and high-quality public education, healthcare and public services for our students, their families and our communities. [The AFT is] committed to advancing these principles through community engagement, organizing, collective bargaining and political activism, and especially through the work our members do.”

Considering their work representing teachers, teachers' aids, nurses, and other public school employees, Amici Curiae have an interest in ensuring that Article III, Section 14 of the Pennsylvania Constitution ("Education Clause") is enforced so that all Commonwealth children receive a "thorough and efficient system of public education" as promised by the framers of that provision. Amici Curiae believe this Court will benefit from this brief because it demonstrates that the Education Clause provides a fundamental right to a quality education to all school age children in the Commonwealth attending one of the thousands of its public schools. The failure of the Commonwealth to ensure that fundamental right is protected has resulted in thousands of school children in rural and urban school districts to receive funding so insufficient that it undermines the quality of the education they receive, the textbook and library resources available, and the safety of the school facilities themselves. Amici Curiae strongly believe that the time is now to fully recognize that the Education Clause affords a fundamental right to a quality public education and for the General Assembly, our Governor, and our Courts to abide by that constitutional mandate and correct the constitutional wrongs perpetuated against Pennsylvanian schoolchildren.

II. STATEMENT OF QUESTION INVOLVED

Should this Court find that Article III, Section 14 of the Pennsylvania Constitution provides a fundamental right to a quality public education for all Pennsylvania public school students when the text of the provision, the history of its enactment, the Pennsylvania caselaw interpreting it as well as the caselaw in other states with a similar provision, and the policy behind it all support this conclusion?

Suggested Answer: Yes.

III. SUMMARY OF ARGUMENT

The conclusion that Article III, Section 14 of the Pennsylvania Constitution creates a fundamental right to a quality public education is supported by (1) the text of the provision, (2) the long history of including an education clause in the various iterations of the Pennsylvania Constitution, (3) Pennsylvania case law interpreting the provision, and the case law of other states with a similar provision, and (4) the policy behind the adoption of the provision.

First, the text of the current Education Clause makes clear that the framers of the provision were commanding the General Assembly to “provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.” As noted by one of the delegates at the 1873 Constitutional Convention, it created a “constitutional injunction” imposed upon the Pennsylvania legislature.

Second, the history of including an education provision and in particular the discussions at the 1873 Constitutional Convention make clear that its purpose was to ensure that the Commonwealth afforded its residents a quality education. In doing so, the delegates understood and conveyed their strong conviction that quality public education was necessary for the preservation of the democratic republic.

Third, the Pennsylvania case law on the Education Clause, including case law interpreting the 1874 version of the provision and the 1968 version acknowledged that the critical importance of education. In fact, in 1995, our Supreme Court stated that “public education in Pennsylvania is a fundamental right.” Additionally, of the seven other states with a similar provision as our Education Clause, most have found that their respective provision grants the courts the authority to determine if state financing is sufficient to maintain a “thorough and efficient” public school system. More importantly, three states with a similar provision have held that public education is a fundamental right.

Fourth, and finally, the drafters of the 1874 Education Clause made clear the purpose of the provision. It was to ensure that the Commonwealth provided a quality education to its residents so they could effectively participate in the democratic republic.

For all these reasons, Article III, Section 14 of the Pennsylvania Constitution imposes a “constitutional injunction” upon the General Assembly, which created a fundamental right to a quality education.

IV. ARGUMENT

Our Supreme Court has declared that “it is both important and necessary that [Pennsylvania state courts] undertake an independent analysis of the Pennsylvania Constitution each time a provision of that fundamental document is implicated.” *Commonwealth v. Edmunds*, 586 A.2d 887, 894-85 (Pa. 1991). When courts undertake that analysis, our Supreme Court enumerated four crucial factors that should be applied when interpreting the meaning of a provision of the Pennsylvania Constitution:

- 1) text of the Pennsylvania constitutional provision;
- 2) history of the provision, including Pennsylvania case-law;
- 3) related case-law from other states;
- 4) policy considerations, including unique issues of state and local concern, and applicability within modern Pennsylvania jurisprudence.

Id. at 895. While the *Edmunds* factors do not on their own determine whether a provision of the Pennsylvania Constitution is a fundamental right, application of those principals to the Education Clause strongly support such a conclusion.²

² Admittedly, the *Edmunds* factors were specifically designed to determine if a Pennsylvania constitutional provision should be interpreted and understood separate and apart from the federal constitution. *Id.* at 894-95. Nevertheless, it offers a guidepost for interpreting provisions of the

A. The Various Versions of the Education Clause Consistently Recognized the Vital Necessity of Public Education, and Its Current Iteration Demonstrates that Its Framers Understood That Public Education Is a Fundamental Right.

The Commonwealth has a long-established and proud constitutional tradition of recognizing the premier importance of public education in a democratic republic and the necessity of providing sufficient funds to ensure its residents are adequately educated. This tradition’s roots can be traced as far back as Benjamin Franklin (“Mr. Franklin”), a framer of both the first constitution of Pennsylvania and the United States Constitution, who declared prior to the Revolutionary Era:

The good Education of Youth has been esteemed by wise Men in all Ages, as the surest Foundation of the Happiness both of private Families and of Commonwealths. Almost all Governments have therefore made it a principal Object of their Attention, to establish and endow with proper Revenues, such Seminaries of Learning, as might supply the succeeding Age with Men qualified to serve the Publick with Honour to themselves, and to their Country.

Benjamin Franklin, *Proposals Relating to the Education of Youth in Pennsylvania* (1749).³ Given Mr. Franklin’s involvement in the drafting of our first state

Pennsylvania Constitution regardless of whether those provisions have a federal analogue. There is no dispute that the U.S. Supreme Court has held that the federal constitution does not create a fundamental right to public education. *See San Antonio Independent Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973).

³ Benjamin Franklin, *Proposal Relating to the Education of Youth in Pennsylvania* (1749), available at <http://www.archives.upenn.edu/primdocs/1749proposals.html>. Mr. Franklin devoted considerable effort in his lifetime to advancing the cause of public education in Philadelphia and across Pennsylvania. Upon his death, he bequeathed considerable funds to the education of children.

constitution, it is hardly surprising that the promotion of public education found itself enshrined in that original document and in subsequent versions.

The Pennsylvania Constitution of 1776, the first for our Commonwealth, reflects Mr. Franklin's views on public education as it requires the General Assembly to educate children through county schools to accomplish this goal at reduced cost. Chapter II of that document reads:

A school or schools *shall be established in 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.

Pa. Const. of 1776, ch. II, § 44 (emphasis added).

Following the Constitutional Convention of 1790, the Pennsylvania Constitution of 1790 modified the public education provision, and declared:

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.

Pa. Const. of 1790, art. VII, § 1 (emphasis added). Unlike the prior provision, this language obligated the General Assembly to educate poor children free of charge, although giving some leeway in the amount of time to accomplish this duty. This

provision remained in our Constitution until adoption of the Pennsylvania Constitution of 1874.⁴

With the adoption of the Pennsylvania Constitution of 1874, the provision on public education was greatly expanded. The newly adopted Education Clause required that the General Assembly educate all children over the age of six and established a minimum appropriation of \$1 million to accomplish this mandate.

Article X, Section 1 stated:

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 appropriate at least one million dollars each year for that purpose*.

Pa. Const. of 1874, art. X, § 1 (emphasis added).

This version of the Education Clause remained in our Constitution until May 16, 1967, when the voters approved several amendments proposed by the General Assembly through passage of Joint Resolution No. 3, 1967, P.L. 1037. One of those amendments refined the public education provision to read as follows: “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.” Pa.

⁴ Although there was a Constitutional Convention in 1837, the adopted document, the Pennsylvania Constitution of 1838, retained the same words as Article VII, Section 1 in the previous version. The only difference was the deletion of commas before and after “by law.” Compare Pa. Const. of 1790, art. VII, § 1, with Pa. Const. of 1838, art. VII, § 1.

Const., art. III, § 14 (emphasis added). The provision, which remains in our Constitution to this day, continues the centuries-long, constitutional obligation imposed on the General Assembly to ensure the education of the children of the Commonwealth and provide sufficient “maintenance and support” for the effort.

The Pennsylvania Constitution has long recognized the necessity of providing education to its school children. The current iteration of that provision, Article III, Section 14 creates a constitutional obligation, commanding the General Assembly to ensure that it provide for public education as well as the necessary support, including adequate funding. It therefore constitutes a fundamental right.

B. The Debates at the Constitutional Convention of 1873 Demonstrate that the Framers of the Education Clause Intended to Create a Constitutional Mandate that the General Assembly Provide for and Fund Quality Public Education.

Prior to the debates at the Constitutional Convention of 1873 (“1873 Constitutional Convention”) the Pennsylvania Constitution only provided for a discretionary system of public schools for poor children, known at the time as “pauper schools.” Testimony of Derek Black, Tr. 931:13-933:7.⁵ The delegates who attended the 1873 Convention made clear that one of their principal goals was

⁵ Derek W. Black is a professor of law and the Ernest F. Hollings Chair in Constitutional law, at the University of South Carolina. Tr. 904:14-20 (Black). During the trial in this matter, he was qualified as an expert in the “history of education law with a specialty in the history of state constitutional education clauses.” Tr. 918:13-919:6. A more detailed exposition of his qualifications can be found in Petitioners’ Findings of Fact and Conclusions of Law (“FOF”), at p. 27, n.2.

ensuring that all children of the Commonwealth were provided a quality education. *Id.*, Tr. 919:19-920:15. At the 1873 Constitutional Convention of 1873—at which it was first decided to add a requirement that the Legislature provide a “thorough and efficient system” of public education for all children—there was universal agreement that this effort was necessary for the common good. The delegates to the convention felt so strongly concerning the need for public education that they sought to impose a “constitutional injunction” against the General Assembly to provide for it, even though efforts had already been underway legislatively. William Darlington, a Senator from Chester and Delaware Counties (“Mr. Darlington”), explained:

The Legislature, with the sanction of the people of this Commonwealth, has gone far in advance of the *constitutional injunction* placed [in Article VII, Section 1 of the Pennsylvania Constitution of 1790]. Perhaps the subject might be safely left to the Legislature still. Indeed there cannot be any absolute necessity for the expression of an opinion by this Convention; *but inasmuch as we might be said to be on the backward road if we said nothing on the subject, we felt that it was better for this Convention that it ought so to recognize the existence of that admirable system of public schools which now prevails over the Commonwealth as the existing state of things require. It will be therefore perceived that, instead of depending upon the Legislature to establish a system of education, the phraseology of the first section, now before us, we think shall provide for the maintenance and support*, merely recognizing the fact as it exists, and merely changing the phraseology from common schools to a system of public schools. This is the general purport of the first section.

Debates of Constitutional Convention to Amend the Constitution of Pennsylvania (1873) (“*Pennsylvania Debates of 1873*”), Vol. 2:419 (emphasis added). Through these remarks, Mr. Darlington demonstrated that the framers of the new education provision did not desire to leave the continued existence and support of public education to the sole discretion of the General Assembly.

The framers perceived a need for a constitutional requirement to be placed upon the General Assembly to provide for public education due to their strong conviction that it was a necessity for a democratic republic to have an educated populous. Mr. Darlington explained his understanding on the subject: “If we are all agreed upon one thing it 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.” *Id.*, Vol. 2:421. He explained that “the safety of the State and the safety of the government depends upon the education of all children...if we would preserve our present form of government, it is absolutely necessary that the children of the Commonwealth...should be educated.” *Id.*

Other delegates expressed a similar enthusiasm for the importance of the public education system. Harry White, a State Senator from Indiana County (“Mr. White”), declared that “[t]he section on education is second in importance to no other section to be submitted to this Convention.” *Id.* In response to delegates who engaged in a failed attempt to amend the proposed provision by inserting the word

“uniform” before “thorough and efficient,” Augustus S. Landis (“Mr. Landis”), a State Senator, rejected the idea, arguing that “enough would be attained by the use of the word ‘system,’ and when you have affixed to that the adjectives ‘thorough and efficient,’ it seems to me you have accomplished all that is necessary to accomplish.” *Id.*, Vol.2:423. Even in arguing in favor of the insertion of the word “uniform,” Samuel M. Wherry (“Mr. Wherry”), a State Senator from Cumberland and Franklin Counties, proclaimed:

Surely if there be any matter of pride and glory in our State, it is to be found in our system of common schools; and if there be one thing in it of more value than another, it is this uniformity—this rigid, equal and impartial system. Our common schools are the great, broad leveler by which all the children of the Commonwealth are placed in one common arena.

Id.. Vol. 2:424. In fact, the delegates demonstrated their belief in the crucial importance of creating a public education system for all children in the Commonwealth by the extensive time they discussed the issue at the 1873 Constitutional Convention. Tr. 929:21-930:6 (Black).

The delegates to the Constitutional Convention were equally supportive of the addition of the second sentence of the proposed provision requiring the General Assembly to appropriate at a minimum \$1 million towards funding public education. While recognizing that this amount exceeded by nearly \$300,000 the highest appropriation ever made for public education by the General Assembly, George Lear

(“Mr. Lear”), a State Senator from Bucks and Northampton Counties, declared that mandating a minimum level of state appropriations for public education was “of the highest importance to the *efficiency* of the public school system of Pennsylvania, and we should have a minimum below which this appropriation shall not go” *Id.*, Vol. 2:435 (emphasis added). Thus, Mr. Lear acknowledged and supported the idea that adequate state funding for public education, in fact greater funding, was a necessary step to ensure a “thorough and efficient system of public schools.” In fact, he declared that “[t]his subject is probably of more importance than any other one that will receive the attention of this committee....” *Id.*, Vol. 2:436. John S. Mann (“Mr. Mann”), a State Senator from Potter County, concurred, stating that the provision was “the most important one that has been proposed to this Convention.” *Id.*

Delegates to the 1873 Constitutional Convention recognized that requiring adequate funding of public education would ensure that all the children of Pennsylvania, rich or poor, would receive the necessary instruction. In explaining his reasoning for the import of a constitutionally mandated appropriation, Mr. Lear stated that it was a way to provide for the education of poorer children in the Commonwealth:

[I]t enables the districts where they are not wealthy, because wealth does not always go with population, and where we have our farms of many hundred acres, and the population is sparse, the people are more wealthy, but

when we get into our mining and manufacturing communities, where there are little huts filled with children—because poverty and population, at least the multiplicity of children seem to go hand in hand, there it is, that the appropriations from the State in accordance with the number of children in the schools, as the case may be, is an assistance and help to these localities where children prevail to a greater extent than wealth.

Id. Mr. White concurred, stating that “I do not think that we can over-estimate the value of this provision ... If the original provision passes hundreds of people in the poorer parts of this Commonwealth will say, ‘God bless the Convention.’” *Id.*, Vol. 2:437. He then urged:

Let this Convention, representing as it does, the free sovereignty of this Commonwealth, indicate its wish, that in no event shall the Legislature, for all the great benefits and purposes of education, appropriate less than a million of dollars, and you will have accomplished a mighty thing.

Id., Vol. 2:438.

Thus, the delegates, through this provision, sought to prohibit any discretion on the part of the General Assembly about whether to provide public education or to fund it. In fact, the delegates were extremely skeptical about the General Assembly, which seemed more concerned about corporate interests than ensuring the Commonwealth’s children were properly educated. Tr. 923:22-924:3 (Black). To further ensure that public education received the necessary funding, the delegates included education along with the three branches of government in the general appropriations bill. *Id.*, Tr. 933:22-934:21 (Black).

Ultimately, the Education Clause, as drafted and adopted by the delegates at the 1873 Constitutional Convention, was later approved by the voters and remained in the Pennsylvania Constitution in the form found in the 1874 Constitution until the adoption of the 1968 Constitution.⁶ In 1967, the General Assembly sought to amend the Education Clause, along with several other provisions of the Pennsylvania Constitution, through passage of a resolution and presentation of the amendment to the voters. Nothing in the legislative history indicates that the framers were foregoing the long-held belief that the General Assembly was constitutionally mandated to provide for and support public education, including through necessary appropriations. Tr. 1074:21-1075:1 (Black); Tr. 1078:20-1079:7 (Black). Describing the amendment, House Representative Beren stated:

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. Now the language provides that 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.

⁶ Petitioners' Findings of Fact and Conclusions of Law provide a thorough review of the history of the 1873 Constitutional Convention, relying upon the testimony of Professor Black. *See* Petitioners' FOF, at ¶¶ 63-110. Additionally, a lengthy explication of the history of the Education Clause can be found in *William Penn Sch. Dist. v. Pa. Dep't of Educ.*, 170 A.3d 414, 418-425 (Pa. 2017); *Pa. Ass'n of Rural & Small Sch. v. Ridge*, 1998 Pa. Commw. Unpub. LEXIS 1 (Cmwlth. July 9, 1998) (hereinafter "PARSS"), *affirmed by PARSS v. Ridge*, 737 A.2d 246 (Pa. 1999) (per curiam).

House, *Pa. Legislative Journal* at 80 (Jan. 30, 1967). As Professor Black testified, the addition of the phrase “to serve the needs of the Commonwealth” and the elimination of the \$1 million dollar amount did not mean that the drafters of the current version of the Education Clause were providing discretion to the General Assembly to appropriate whatever amount they saw fit. Tr. 1082:4-7 (Black).

Based on the extensive history of the adoption of the Education Clause, the framers meant to create a fundamental right to a quality public school education. The delegates at the 1873 Constitutional Convention strongly believed that a quality public school education was a necessity for our republican form of government and not simply another service provided by the state. The history of the debates demonstrates that they did not trust the General Assembly to provide and fund such public education and, therefore, created a constitutional injunction in the form of the Education Clause to do so. Clearly, in drafting and adopting the Education Clause, they created a fundamental right to a quality public school education.

C. Pennsylvania Courts Have Acknowledged That Public Education Is “Indispensable” in a Democracy and a Fundamental Right.”

While our Supreme Court in *William Penn* deferred on the question as to whether the Education Clause creates a fundamental right to a quality public school education, other Pennsylvania decisions have acknowledged that the framers and the people commanded the General Assembly, through the Pennsylvania Constitution,

to provide for a “thorough and efficient system” of public education. In the *Teachers’ Tenure Act Cases*, 197 A. 344 (Pa. 1938), this Court made clear that the purpose of the “thorough and efficient” language in the Pennsylvania Constitution was to require the General Assembly to provide a public education for the benefit of the polity as a whole, including the poor, and not allow its future existence to be left to the Legislature’s discretion alone. In considering a challenge to the constitutionality of the Teachers’ Tenure Act under the then-existing Education Clause, the Court stated:

The Constitution of Pennsylvania, by Article X, Section 1, not only recognizes that the cause of education is one of the distinct obligations of the State, but makes of it an indispensable governmental function. The power of the State over education thus falls into that class of powers which are made fundamental to our government. In the abstract it is not an absolute essential to government as taxation, law enforcement and preservation of the peace are essential, but by the express provision of the Constitution it ranks with them as an element necessary for the sustenance and preservation of our modern State. Education is to-day regarded as one of the bulwarks of democratic government. Democracy depends for its very existence upon the enlightened intelligence of its citizens and electors. *When the people directed through the Constitution that the General Assembly should “provide for the maintenance and support of a thorough and efficient system of public schools,” it was a positive mandate that no legislature could ignore. The power over education is an attribute of government that cannot be legislatively extinguished. It cannot be bargained away or fettered. Its benefits to a free government cannot be placed on the auction block or impeded by laws which will ultimately weaken, if not destroy, the underlying*

constitutional purpose. To permit such legislative incursion would relegate our State back to the days when education was scarce and was secured only through private sources, as a privilege of the rich.

197 A. at 352 (emphasis added).

While recognizing the framers' intent to create this "constitutional injunction," as Mr. Darlington commented, the Court still understood that it afforded the General Assembly the ability to make education policy choices "to adopt a changing program to keep abreast of education advances." 197 A. at 352. However, the "people have directed that the cause of public education cannot be fettered, but must evolute or retrograde with succeeding generations as the times prescribe." *Id.* Thus, even in the Depression Era, this Court understood that the General Assembly has a constitutional mandate to provide a public education, while leaving in its hands the authority to make necessary adjustments to the nature of that education to abide by its obligation. The Legislature lacks, however, any authority to abolish or otherwise undermine public education such that it is not ensuring a "thorough and efficient system of public education" for the Commonwealth's children.

Our Supreme Court acknowledged the constitutional sanctity afforded public education by recognizing that it constitutes a "fundamental right." In *Wilkinson Education Ass'n v. Sch. Dist. of Wilkinson*, 667 A.2d 5 (1995) (hereinafter "*Wilkinson*"), it stated

In reviewing the proceedings in this case, it is apparent that some salient principles have escaped notice. ***First, public education in Pennsylvania is a fundamental right.*** It is required by *Article III, Section 14 of the Pennsylvania Constitution*. ***Second, this court has consistently examined problems related to schools in the context of that fundamental right.***

542 Pa. at 343, 667 A.2d at 9 (emphasis added). Similarly, a later single-judge opinion of the Commonwealth Court stated that “[u]nder the [Pennsylvania] Constitution, public education is a fundamental right, defined also as a civil right that may not be denied to any person on the basis of race within the Commonwealth.” *Pa. Human Relations Comm’n v. Sch. Dist. of Philadelphia*, 681 A.2d 1366, 1383 (Pa. Cmwlth. 1996) (hereinafter “*PHRC*”). While our Supreme Court in this matter deferred from holding that the Education Clause creates a fundamental right to a quality public education, the language of the opinion strongly suggests that it is. *William Penn*, 170 A.3d at 457 (recognizing that the Education Clause creates a “constitutional mandate to furnish education of a specified quality, ‘thorough and efficient.’”)

Despite acknowledging that public education is a fundamental right, the *Wilkinson* court, quoting *Sch. Dist. of Philadelphia v. Twer*, 447 A.2d 222 (Pa. 1982), found that the proper inquiry in determining the constitutionality of a statute effecting public education is as follows:

The polestar in any decision requiring the assignment of priorities of resources available for education must be the

best interest of the student... Any interpretation of legislative pronouncements relating to the public educational system must be reviewed in context with the General Assembly's responsibility to provide for a “thorough and efficient system” for the benefit of our youth.

667 A.2d at 9 (quoting *Twer*, 447 A.2d at 224-25). Hence, this Court did not impose a strict scrutiny standard otherwise required for cases asserting violations of fundamental liberties. Nevertheless, the appellate courts, through their recognition that public education is a fundamental right, demonstrated their understanding of the constitutional obligation imposed on the General Assembly to ensure such education is provided for and supported.⁷

Through their acknowledgement that public education is “an indispensable governmental function” and/or “a fundamental right,” our appellate courts correctly understand the significance of the Education Clause. The provision created a constitutional obligation on the part of the General Assembly to ensure and support quality public education, rather than simply affording it unreviewable discretion to decide if, and to what extent, it would maintain and fund such a project. Thus, the

⁷ The *Wilkinson* decision is consistent with the Supreme Court’s earlier case in *Reichley v. North Penn School District*, 626 A.2d 123 (Pa. 1993) (hereinafter “*Reichley*”). In *Reichley*, while refusing to state whether public education is a “fundamental right” and therefore requires application of strict scrutiny or rational basis analysis, the court found that the question of which standard of review to use only arises when the constitutional challenge is based on the Equal Protection Clause. 533 Pa. at 525, 626 A.2d 126. In neither *Wilkinson* nor *Reichley* was there an equal protection claim raised by the plaintiffs, unlike in the Petition for Review filed by Appellants in this matter.

decisions discussed above support the conclusion that the Education Clause creates a fundamental right to a quality public education.

D. Other State Appellate Courts with a Similar Education Clause as the One Found at Article III, Section 14 Enforced Their Provision Against Their State Legislatures, Including Some That Held That Their Educational Provision Creates a Fundamental Right.

From 1851 to 1889, seven states, other than Pennsylvania, adopted state constitutions that included a provision requiring their respective legislature to establish a “thorough and efficient” systems of public education, which exist to this day: Maryland, Minnesota, New Jersey, Ohio, Pennsylvania, South Dakota, West Virginia, and Wyoming.⁸ In several of these states, the state supreme court has

⁸ See Md. Const., art. VIII, §1 (“The General Assembly, at its First Session after the adoption of this Constitution, shall by Law establish throughout the State a thorough and efficient System of Free Public Schools; and shall provide by taxation, or otherwise, for their maintenance.”); Minn. Const., art. XIII, § 1 (The stability of a republican form of government depending mainly upon the intelligence of the people, it is the duty of the legislature to establish a general and uniform system of public schools. The legislature shall make such provisions by taxation or otherwise as will secure a thorough and efficient system of public schools.”) N.J. Const., art. VIII, § 4, ¶ 1 (“The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years.”); Ohio Const., art. VI, § 2 (“The General Assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state; but no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this state.”); S.D. Const., art. VIII, § 15 (“The Legislature shall make such provision by general taxation and by authorizing the school corporations to levy such additional taxes as with the income from the permanent school fund shall secure a thorough and efficient system of common schools throughout the state.”); W.V. Const., art. XII, §1 (“The Legislature shall provide, by general law, for a thorough and efficient system of free schools.”); Wyo. Const., art. 7, § 9 (“The legislature shall make such further provision by taxation or otherwise, as with the income arising from the general school fund will create and maintain a thorough and efficient system of public schools, adequate to the proper instruction of all youth of the state, between the ages of six and twenty-one years, free of charge; and in view of such provision so made, the legislature shall

recognized that the state's respective education clause gives it the authority to decide challenges to the adequacy of the funding to the public education system, and in some cases, held that the public education financing system was unconstitutional.⁹ In fact, in three of the eight states with a provision similar to our Education Clause - - Minnesota, West Virginia, and Wyoming -- the state supreme court found that that its "thorough and efficient" education clause create a fundamental right to education. *See Skeen v. State*, 505 N.W.2d 299, 313 (Minn. 1993) ("[W]e hold that education *is* a fundamental right under the state constitution, not only because

require that every child of sufficient physical and mental ability shall attend a public school during the period between six and eighteen years for a time equivalent to three years, unless educated by other means.")

⁹ *See Maryland State Bd. of Educ. v. Bradford*, 875 A.2d 703, 723-24 (Md. 2005) ("As part of its responsibility for establishing throughout the State a thorough and efficient system of free public schools, the General Assembly has at least the authority, if not an obligation, to ensure that appropriations for educational purposes are managed wisely and, in furtherance of that authority or obligation, to prohibit local school systems from running deficits and, if they do run such deficits, to insist that they be promptly eliminated."); *Skeen v. Minnesota*, 505 N.W.2d 299, 308 (Minn. 1993) (reviewing a challenge of the state funding scheme but finding it meets the requirements of the education and equal protection clause); *Abbott v. Burke*, 119 N.J. 287, 575 A.2d 359, 412 (1990) (reversing the decision of the state board of education because it had not succeeded in affording a thorough and efficient educational funding system as poor urban districts has less educational opportunities than more affluent school districts); *DeRolph v. State*, 780 N.E.2d 529, 532 (Ohio 1997) (reaffirming its earlier decision that the state public education financing system violated the education clause of the state constitution); *Davis v. State*, 804 N.W.2d 618, 641 (S.D. 2011) ("We are unable to conclude that the education funding system ... fails to correlate to the actual costs or with adequate student achievement to the point of declaring the system unconstitutional."); *Kanawha County Pub. Library Bd. v. Bd. of Educ. of Kanawaha*, 745 S.E.2d 424, 444 (W.V. 2013) (holding that a state statute for funding public school libraries violates the state constitution's equal protection provision as it lacks uniformity); *Campbell Cty. Sch. Dist. v. State*, 907 P.2d 1238, 1257-58 (Wyo. 1995) (holding the state's public school financing system wholly unconstitutional).

of its overall importance to the state but also because of the explicit language used to describe this constitutional mandate”); *Pauley v. Kelly*, 255 S.E.2d 859, 878 (W.Va. 1979) (“Because education is a fundamental constitutional right in this State, then, under our equal protection guarantees any discriminatory classification found in the educational financing system cannot stand unless the State can demonstrate some compelling State interest to justify the unequal classification.”); *Campbell Cty. Sch. Dist. v. State*, 907 P.2d 1238, 1258 (Wyo. 1995) (recognizing the court’s earlier holding that the state education clause creates a fundamental right and, therefore, must be construed broadly).

These state supreme court rulings, interpreting a similar education clause as Article III, Section 14, provides strong support that Pennsylvania’s Education Clause creates a fundamental right to a quality education.

E. The Policy Behind the Adoption of the Education Clause Strongly Supports Finding That It Affords a Fundamental Right to a Quality Public Education.

From Ben Franklin to the delegates of the 1873 Constitutional Convention, and then the drafters of the current version of our Education Clause, it was well understood that providing a quality public education was not only something that would benefit individual students but also represented a constitutional necessity to ensure that the citizenry could effectively participate in the Commonwealth’s republican form of government. The drafters of the 1874 Education Clause, which

still exists in a slightly modified form in our current Constitution, were so driven by the need for a quality public education system that they did not want to leave its survival to the deference of the General Assembly, but instead compelled the legislature to provide one. Given this motive to adopt the Education Clause, it strongly supports the idea that the framers were creating a fundamental right which would ensure the existence of quality public education in our Commonwealth.

V. CONCLUSION

For the reasons enumerated above, this Court should hold that Article III, Section 14 creates a fundamental right to a quality education and the Respondents violated that provision through their flawed public education funding scheme.

Respectfully submitted,

WILLIG, WILLIAMS & DAVIDSON

BY: s/ Ralph J. Teti
DEBORAH R. WILLIG, ESQUIRE
Attorney I.D. No. 21507
RALPH J. TETI, ESQUIRE
Attorney I.D. No. 21499
JOHN R. BIELSKI, ESQUIRE
Attorney I.D. No. 86790
1845 Walnut Street, 24th Floor
Philadelphia, PA 19103
(215) 656-3600

Attorneys for Amicus Curiae

Dated: May 16, 2022

CERTIFICATES OF COMPLIANCE WITH WORD LIMIT

I certify that this Amicus Brief was prepared in word-processing program Microsoft Word on Microsoft Office, version 2016, and I further certify that, as counted by Microsoft Word, this Brief contains 6,658 words.

/s/ John R. Bielski
JOHN R. BIELSKI, ESQUIRE
PA Attorney I.D. No. 87690
1845 Walnut Street, 24th Floor
Philadelphia, PA 19103
T: (215) 656-3600
F: (215) 561-5135
jbielski@wwdlaw.com

Dated: May 16, 2022

CERTIFICATION REGARDING PUBLIC ACCESS POLICY

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

/s/ John R. Bielski
JOHN R. BIELSKI, ESQUIRE
PA Attorney I.D. No. 87690
1845 Walnut Street, 24th Floor
Philadelphia, PA 19103
T: (215) 656-3600
F: (215) 561-5135
jbielski@wwdlaw.com

Dated: May 16, 2022