

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

WILLIAM PENN SCHOOL DISTRICT, *et al.*,
Petitioners,

v.

No. 587 MD 2014

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

**APPLICATION FOR LEAVE TO FILE AN AMICUS BRIEF
IN EXCESS OF THE WORD COUNT LIMIT**

Proposed Amicus Curiae Attorney General Josh Shapiro respectfully submits this Application to file an amicus brief in excess of the word count limit and in support thereof offers the following:

1. On April 18, 2022, the Court ordered that any potential amicus curiae briefs in the above-captioned matter must be filed no later than May 16, 2022.
2. Attorney General Josh Shapiro wishes to file an amicus curiae brief to aid the Court's consideration of the important questions raised by this matter, a copy of which is attached to this Application as Exhibit A.
3. Pennsylvania Rule of Appellate Procedure (Pa. R.A.P.) 531(b)(3) sets forth a word count limit of 7,000 words for amicus curiae briefs submitted during merits briefing. *See also* Pa. R.A.P. 531(b)(1)(i).

4. The nature of the issues presented in this proceeding are complex and of great public significance. The great number of concerns addressed in this matter are reflected in the robust record and evidenced by the scope and length of the parties' briefing.

5. In order to thoroughly address the historical facts and precedent necessary to provide the Court with a full understanding of the issues, Proposed Amicus Curiae respectfully requests that the Court permit the use of additional words, not to exceed 10,489 in total, for its amicus brief.

6. Proposed Amicus Curiae conferred with the parties and all parties, except for the Legislative Respondents, consent to this application.

WHEREFORE, Proposed Amicus Curiae respectfully requests that the Court grant this Application and enter an Order in the form attached hereto.

Date: May 16, 2022

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[PROPOSED] ORDER

AND NOW, this _____ day of May, 2022, upon consideration of Proposed Amicus Curiae Attorney General Josh Shapiro's Application to File an Amicus Brief in Excess of the Word Count Limit, it is hereby ORDERED that the Application is GRANTED. IT IS FURTHER ORDERED that Proposed Amicus Curiae Attorney General Josh Shapiro may submit an amicus brief not to exceed 10,489 words.

J.

CERTIFICATE OF COMPLIANCE

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

Date: May 16, 2022

/s/ Aimee D. Thomson
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EXHIBIT A

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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Petitioners,

v.

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

No. 587 MD 2014

**BRIEF OF ATTORNEY GENERAL JOSH SHAPIRO AS
AMICUS CURIAE IN SUPPORT OF PETITIONERS**

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INTEREST OF THE AMICUS CURIAE

Pennsylvania Attorney General Josh Shapiro files this amicus brief in support of Petitioners. As the “chief law officer of the Commonwealth,” Pa. Const. art. IV § 4.1, the Attorney General has an interest in the proper interpretation of the Education Clause of the Pennsylvania Constitution. The Attorney General also has an interest in ensuring that the General Assembly complies with its obligation to adequately fund and support a public school system that gives all Pennsylvania children a comprehensive, effective, and contemporary education. The Attorney General respectfully submits this brief to assist the Court in its analysis of the requirements of the Education Clause, and in particular to offer a historical perspective on the obligations imposed by the Constitution on the General Assembly.¹

INTRODUCTION

Public education is an “indispensable government function,” *Malone v. Hayden*, 197 A. 344, 352 (Pa. 1938)—“perhaps the most important function of state and local governments,” *Brown v. Bd. of Ed. of Topeka*, 347 U.S. 483, 493 (1954). It is “one of the bulwarks of democratic government” and therefore “necessary for the sustenance and preservation of our modern state”; indeed,

¹ This brief was not authored or paid for, in whole or in part, by any person or entity other than Amicus and his counsel.

“[d]emocracy depends for its very existence upon the enlightened intelligence of its citizens and electors.” *Malone*, 197 A. at 352. It is also “the very foundation of good citizenship” and therefore “required in the performance of our most basic public responsibilities.” *Brown*, 347 U.S. at 493.

For these reasons, our Constitution requires 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.” Pa. Const. art. III § 14. Properly interpreted, the Education Clause mandates the General Assembly to ensure that every child in Pennsylvania has a comprehensive and effective public education, one that reflects contemporary knowledge and which prepares students to succeed in a career and contribute to Pennsylvania’s civic life.

The Education Clause is “a positive mandate that no Legislature could ignore.” *Malone*, 197 A. at 352. Yet the General Assembly has done just that. Despite the best efforts of the Commonwealth’s dedicated teachers and administrators, many Pennsylvania schools are not able to provide the level of education required by the Constitution—not for lack of trying, but for lack of adequate funding. The consequences—students who lack proficiency in core subjects and the tools for success in life and career—rest at the feet of the legislature.

This case is of utmost importance to the Commonwealth. The Court’s decision may determine the future of public education in Pennsylvania, and consequently, the strength of our economy, government, and community for generations to come. The Court should find that the Education Clause requires the General Assembly to provide all Pennsylvania children with a comprehensive, effective, and contemporary public education and rule in favor of Petitioners.

ARGUMENT

I. The Education Clause requires the General Assembly to fund a public education system that provides all students with a comprehensive, effective, and contemporary education that prepares them for career and civic life.

In ruling this dispute justiciable, our Supreme Court directed this Court “to give meaning and force to the language of a constitutional mandate to furnish education of a specified quality.” *William Penn Sch. Dist. v. Pa. Dep’t of Educ.*, 170 A.3d 414, 457 (Pa. 2017). Amicus seeks to assist the Court in identifying the “meaning and force” of the Education Clause. Using the established tools of constitutional construction, *see League of Women Voters v. Commonwealth*, 178 A.3d 737, 802-03 (Pa. 2018); *Robinson Twp. v. Commonwealth.*, 83 A.3d 901, 943-44 (Pa. 2013), the Education Clause directs the General Assembly to provide continuing support for a comprehensive, effective, and contemporary system of education that prepares all Pennsylvania children for career and civic life.

A. Text

The “touchstone of interpretation of a constitutional provision is the actual language of the Constitution itself” as “understood by the people when they voted on its adoption.” *League of Women Voters*, 178 A.3d at 802 (quotations omitted). If the language of the Constitution is “clear and explicit,” then the court “will not delimit the meaning of the words used by reference to a supposed intent.” *Id.* (quotations omitted). If the language is not explicit, the court may “discern intent” by looking at “the occasion and necessity for the provision; the circumstances under which the amendment was ratified; the mischief to be remedied; the object to be attained; and the contemporaneous legislative history.” *Id.*

The Education Clause provides the constitutional framework for Pennsylvania’s public system of education. It states:

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. Const. art. III § 14. The clause can be divided into three parts: what the General Assembly must do (“provide for the maintenance and support” of a “system of public education”), the standard the General Assembly must meet (the “system of public education” must be “thorough and efficient”), and the purpose of that mandate (the “system of public education” must “serve the needs of the Commonwealth”).

1. The General Assembly must “provide for the maintenance and support of” Pennsylvania’s “system of public education.”

The Education Clause imposes an affirmative obligation on the General Assembly: it “shall provide for the maintenance and support of a thorough and efficient system of public education.” Pa. Const. art. III § 14. The term “shall” is generally interpreted to impose a mandatory duty. *Chanceford Aviation Props., L.L.P. v. Chanceford Twp. Bd. of Super’s*, 923 A.2d 1099, 1104 (Pa. 2007); *see also Abbeville Cty. Sch. Dist. v. State*, 515 S.E.2d 535, 540 (S.C. 1999) (holding the word “shall” renders mandatory an education clause stating: the “General Assembly shall provide for the maintenance and support of a system of free public education”). Accordingly, the Supreme Court has described the Education Clause as a “constitutional mandate.” *See generally William Penn*, 170 A.3d 414.

The scope of this mandate is broad: to “provide for the maintenance and support” of a “system of public education.” The language defining the scope of the legislature’s mandate, added to the Constitution in 1874, calls on the General Assembly to do more than simply “provide” a system of public education. Instead, the legislature must “provide *for the maintenance and support*” of that system. A contemporary dictionary defined “provide” to mean “to procure supplies or means in advance; to take measures beforehand in view of an expected or a possible future need.” *Provide*, *Webster’s International Dictionary* (1890 ed.). The words

“maintenance and support” supplement “provide for” by requiring sufficient resources, on an ongoing basis, such that public schools can continue to operate. *See, e.g., Maintain, Webster’s International Dictionary* (1890 ed.) (“to bear the expense of”); *Support, Webster’s International Dictionary* (1890 ed.) (“to furnish with the means of sustenance or livelihood; to maintain; to provide for”; “to carry on; to enable to continue”). Providing for maintenance and support also requires attention to outcomes. *See, e.g., Maintain, Webster’s International Dictionary* (1890 ed.) (“not to suffer to fail or decline”); *Maintenance, Webster’s International Dictionary* (1865 ed.) (“upholding, defending, or keeping up; sustenance; support; defense; vindication”). Put together, the Education Clause imposes an obligation on the General Assembly to determine the current and future needs of Pennsylvania’s public education system and provide it with resources, on a continuing basis, that meet those needs and allow it to thrive.

2. Pennsylvania’s “system of public education” must be “thorough and efficient.”

The General Assembly’s constitutionally mandated “maintenance and support” must provide a public education system that is “thorough and efficient.” That requirement, also added to the Constitution in 1874, is the heart of the Education Clause’s promise.

“Thorough and efficient” is a high standard. One 19th century dictionary defined “thorough” as “complete” and “perfect.” *Thorough, Webster’s*

International Dictionary (1890 ed.) (“Passing through or to the end; hence, complete; perfect”). Another dictionary from the era defined “thorough” as “fully executed; having no deficiencies.” *Campbell Cty. Sch. Dist. v. State*, 907 P.2d 1238, 1258 (Wyo. 1995) (citing *Thorough*, *The Century Dictionary* (1889 ed.)). Educational reformer Horace Mann, who is often credited as the originator of the phrase “thorough and efficient,” see *Pa. Ass’n of Rural & Small Schools v. Ridge*, 11 M.D. 1991, slip op. at 93-94 (Commw. Ct. July 9, 1998) (“*PARSS*”), described thoroughness as follows: “a pupil should never be suffered to leave any subject, until he can reach his arms quite around it, and clench his hands upon the opposite side,” Horace Mann, *Means and Objects of Common-School Education* (1840), reprinted in *Life and Works of Horace Mann II*, at 69 (George Combe Mann et al. eds., 1891). Consistent with both its accepted meaning at the time and Mann’s understanding, the word “thorough” is therefore best understood as requiring that the education provided by Pennsylvania’s public schools be *comprehensive*; that is, it must teach students the necessary range of subjects and skills and do so in sufficient depth.

The 1874 understanding of “efficient” is somewhat different from today’s meaning. Contemporaneous dictionaries defined efficient as “[c]ausing effects; producing results; actively operative; not inactive, slack, or incapable; characterized by energetic and useful activity.” *Efficient*, *Webster’s International*

Dictionary (1865 ed.); *Efficient*, *Webster's International Dictionary* (1890 ed.).

This understanding of “efficient” is synonymous with how we today define “effective.” *Compare ibid.*, with *Effective*, Merriam-Webster.com Dictionary (“producing a decided, decisive, or desired effect”).² Although we today may understand “efficient” to mean “capable of producing desired results with little or no waste,” *Efficient*, Merriam-Webster.com Dictionary,³ the term did not similarly emphasize minimizing costs when added to the Education Clause.

Relevant judicial decisions confirm this understanding of efficiency. For instance, in discussing changes that occurred in Pennsylvania’s public education system following adoption of the 1874 Constitution, the Supreme Court noted that the legislature had significantly increased state appropriations in order “to add to the *efficiency* of the schools.” *In re Walker*, 36 A. 148, 150 (Pa. 1897) (emphasis added). Decades later, it held that “efficient” as used in the Education Clause “has reference not only to the qualifications of the teacher, but relates to other basic matters associated with the school system.” *Ehret v. Sch. Dist. of Borough of Kulpmont*, 5 A.2d 188, 192 (Pa. 1939). It further explained by example: “One teacher teaching eighty pupils might keep a school open, but this would not be an

² <https://www.merriam-webster.com/dictionary/effective> (last visited May 16, 2022).

³ <https://www.merriam-webster.com/dictionary/efficient> (last visited May 16, 2022).

efficient system because it would not permit the individual scholar to be trained as the State desires him to be.” *Id.* at 193 (emphasis added). These usages are inconsistent with an understanding of the term focusing primarily on costs, but fully consistent an understanding synonymous with “effective.”

Taken together, “thorough” speaks to the scope and depth of a student’s education and “efficient” speaks to whether the student actually learns. A “thorough and efficient” education, therefore, is best understood today as requiring the system to provide students with a *comprehensive* and *effective* education.

3. Pennsylvania’s “system of public education” must “serve the needs of the Commonwealth.”

The Education Clause concludes with an expression of purpose: the “thorough and efficient system of public education” must “serve the needs of the Commonwealth,” a phrase added in 1967. Beyond simply explaining the purpose of the provision, the phrase provides a constitutionally significant benchmark for measuring whether the Commonwealth’s schools are providing an education that is both comprehensive and effective.

The Commonwealth’s most fundamental need is an intelligent and informed citizenry, which will support our democratic institutions, grow our economy, and strengthen the foundations of our shared civic life. The “importance of public education to the success of democracy,” therefore, cannot be overstated. *See William Penn*, 170 A.3d at 424; *see also Malone*, 197 A. at 352. As Mann argued,

“[i]f republican institutions do wake up unexampled energies in the whole mass of a people, and give them implements of unexampled power wherewith to work out their will; then these same institutions ought also to confer upon that people unexampled wisdom and rectitude.” Horace Mann, *The Necessity of Education in a Republican Government* (1838), reprinted in *Life and Works of Horace Mann II*, at 150 (George Combe Mann et al. eds., 1891). Representative government gives each citizen the power to “throw[] his influence and his vote into one or the other of the scales where peace and war, glory and infamy are weighed” and, as Mann saw it, “a virtuous or a vicious education tends to fit or to unfit him for them all.” *Id.* at 145.

Education also allows our children pursue high-skilled careers, obtain gainful employment, and live successful lives. The vast majority of all professions require a high school diploma or equivalent and almost half require some level of post-secondary education. U.S. Bureau of Labor Stats., *Education and Training Assignments by Detailed Occupation* (Sept. 8, 2021).⁴ Occupations that require more education have a higher median annual wage and are expected to grow faster over the next decade. U.S. Bureau of Labor Stats., *Occupations that Need More*

⁴ <https://www.bls.gov/emp/tables/education-and-training-by-occupation.htm>.

Education for Entry are Projected to Grow Faster Than Average (Apr. 19, 2022).⁵

Lower educational attainment, by contrast, is correlated with higher unemployment. U.S. Bureau of Labor Stats., *Education Pays* (Apr. 29, 2022).⁶ A better education, therefore, means more career opportunities and opportunities for a higher income. A better educated populace strengthens our economy and allows Pennsylvania residents to live healthier, more comfortable, and more fulfilling lives. Moreover, regardless of a person's career, every resident of Pennsylvania must pay taxes, contract to rent or purchase a home, purchase goods and services, participate in their community, and make choices that preserve personal health and wellbeing. A high-quality education provides the knowledge and skills necessary to make informed choices and successfully perform these daily tasks, which in turn facilitates autonomy and social cohesion.

The tools required to meet these needs necessarily change over time. For example, schooling in the late 1800s did not generally extend through high school, but “[t]oday, a system of public education which did not offer high school education would hardly be thorough and efficient.” *Robinson v. Cahill*, 303 A.2d 273, 295 (N.J. 1975). Similarly, schools in 1967 were not expected to teach students computer literacy; now, no one would seriously contend that the

⁵ <https://www.bls.gov/emp/tables/education-summary.htm>.

⁶ <https://www.bls.gov/emp/tables/unemployment-earnings-education.htm>.

Commonwealth's needs can be met without computer skills. The requirement that public education must "serve the needs of the Commonwealth," therefore, indicates that the public school education must be *contemporary*; that is, it must be responsive to modern knowledge and enable our children to successfully live, work, and vote in today's Pennsylvania.

* * *

In sum, the plain text of the Education Clause imposes an affirmative obligation on the General Assembly to ensure that Pennsylvania's schools provide an education that is *comprehensive, effective, and contemporary* and prepares all Pennsylvania children to pursue a career and participate in civic life. Compliance with this obligation requires attention to inputs as well as outcomes; that is, the General Assembly must both ensure that the system has adequate resources and that it is actually providing the level of education required by the Constitution.

B. History

In addition to the plain text, the legislative and contemporaneous history of the Education Clause assists in understanding its meaning. *See League of Women Voters*, 178 A.3d at 802-03 (citing *Commonwealth v. Edmunds*, 586 A.2d 887, 895 (Pa. 1991)). This history bolsters the conclusion that the General Assembly must provide for a system of public education that is comprehensive, effective, and

contemporary, and it refutes the suggestion that the legislature has the sole discretion to determine its obligations under the Education Clause.

1. The 1872-1873 Convention intended for the General Assembly to provide for a high-quality system of education.

Pennsylvania's public education system originated with William Penn's 1682 Frame of Government of Pennsylvania and has been a part of our founding document since 1776. *See generally William Penn*, 170 A.3d at 418-23; *PARSS* at 86-105. Although Pennsylvania's early constitutions called only for free state schools to educate the poor, universal public education gained widespread legislative and public support in first half of the 19th century. *William Penn*, 170 A.3d at 419-23; *PARSS* at 89-93. By 1837, the "notion of the pauper school had been marginalized, and most parts of the state accepted a tax-based system of public education for all young people." *William Penn*, 170 A.3d at 422. By the 1850s, a universal system of public education was expanding throughout Pennsylvania and in a number of other states, thanks in part to the efforts of Mann, a firm believer that "universal public education was essential to democracy." *PARSS* at 93-96.

The 1872-1873 Convention added the Education Clause's core obligation: the "General Assembly shall provide for the maintenance and support of a thorough and efficient system of public schools." Pa. Const. art. X § 1 (1874). The phrase was first introduced by Delegate Simpson, who proposed the language: the

“General Assembly shall provide a thorough and efficient system of free schools.” Debates of Convention to Amend the Constitution of Pennsylvania (“1873 Debates”), Vol. 1:91 (1873). The Education Committee replaced “free” with “public” and added the words “for the maintenance and support of.” *Id.* Vol. 2:250. The Convention ultimately adopted the Committee’s proposed language. *See id.* Vol. 7:696 (passing final article).

The debates reveal that the delegates believed the words “thorough and efficient” meant a system of high-quality public schools for all children. Delegate Darlington, chairman of the Committee, explained that the Committee added the words “maintain and support” to “recognize the existence of that admirable system of public schools which now prevails all over the Commonwealth.” *Id.* Vol. 2:419; *see also id.* Vol. 2:426 (Hazzard) (“Our common schools [] are the pride and boast of Pennsylvania” wherein “even the ragged boy out of the mine may go” and “get a good education.”); *id.* Vol. 7:686 (Curtin) (“[N]o part of our government in Pennsylvania which has . . . developed more beneficial results to the people of the State than our system of common school education.”); *id.* Vol. 2:424 (Wherry); *id.* Vol. 7:692-93 (H.G. Smith). Delegate Mann explained that the new Education Clause would “include[] *all* children, every child in the Commonwealth, no matter what its condition [*sic*], rich or poor, favored or unfavored, clothed or unclothed.” *Id.* Vol. 6:45.

At the same time, the debates confirm that what constitutes a thorough and efficient education must necessarily evolve. Delegate Hazzard, for example, characterized “chemistry, natural philosophy, history, [and] algebra” as “higher branches,” *id.* Vol. 2:425—even though we today consider these subjects to be fundamental to a public education, *e.g.*, 22 Pa. Code § 4.12(a); *see also, e.g.*, *Robinson*, 303 A.2d at 295 (although high school was not generally available in the late 1800s, “[t]oday, a system of public education which did not offer high school education would hardly be thorough and efficient”).

The debates further show that the delegates believed education to be “second in importance to no other section to be submitted to this Convention.” 1873 Debates, Vol. 2:421 (Harry White).⁷ Delegate Darlington observed that if they were agreed on anything, “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.* Delegate Bowman stated that “the safety of the State and the safety of the government depends upon the education of all the children”

⁷ *See also id.* Vol. 2:389 (Carter) (education was the “most important interest requiring attention in our State”); *id.* Vol. 2:436 (Lear) (“appropriations for the improvement of the public mind of the State” are “probably of more importance than any other that will receive the attention of this committee”); *id.* Vol. 7:678 (Mann) (“[I]f we are to legislate at all, I insist that we shall legislate upon this most important of all the interests of the State.”).

and argued that “preserv[ing] republican institutions” and “our present form of government” makes it “absolutely necessary that all children in the Commonwealth and in the United States should be educated.” *Id.* Vol. 6:64.⁸ Delegate Wherry observed that public schools “are the great, broad leveler by which all the children of the Commonwealth are placed in one common arena.” *Id.* Vol. 2:424. Delegate Woodward described education as “the cultivation and development of the mental faculties of the children.” *Id.* Vol. 2:443. Delegate Bowman stated that the “welfare and future prosperity of the people depend upon” the “education of all the children in the Commonwealth.” *Id.* Vol. 6:65.

The importance of education led the delegates to impose an unusual requirement: the General Assembly was required to appropriate at least \$1 million annually for public education, an increase of 40 percent at the time. *See id.* Vol. 6:39; 7:696 (passing final article). Delegate Harry White explained that the additional funding was necessary because poor rural counties already impose

⁸ *See also id.* Vol. 6:44 (Wherry) (“It is of the highest interest to you and to me whether our fellow-citizens are ignorant or intelligent. We stand with shame at the ballot box and see our ballot cancelled by some ragged sot too ignorant to comprehend the ballot he casts.”); *id.* Vol. 6:54 (Mantor) (“I have ever held it to be a *principle in this government that if we succeed in establishing that grand foundation on which this government has been based, education is certainly necessary.*”); *id.* Vol. 7:687 (Curtin) (“[T]he beautiful structure of our government . . . rests upon public opinion,” which “must be educated to understand our system of government and the relative duties of the citizens of the State to himself and his surroundings.”).

oppressive school tax rates yet struggled to educate their children. *Id.* Vol. 2:438; *see also id.* Vol. 2:436 (Lear). Delegate Mann stated that the provision would be “the endorsement and the pledge of the Convention that the cause of education is to receive a new impetus.” *Id.* Vol. 6:39. Delegate Beebe explained that not providing sufficient funding would “make a farce of our public school system by ordaining in the Constitution that we shall have public schools and then forc[ing] the poorer counties to assess the maximum of tax authorities by law to support a four months’ school, whereas, in the wealthier counties in the State a tax of two mills would be all that would be requisite for them to have far better schools and for a longer term.” *Id.* Vol. 7:679.

Although the delegates spent many pages debating education, their only substantive disagreement on the General Assembly’s core obligation was about whether to add “uniform” before “thorough and efficient.” *See id.* Vol. 2:422-26. Proponents of the change feared that the legislature might otherwise impose different systems of education in different counties—for example, one receiving “all the departments of learning” and one limited to “the first four rules of arithmetic”—or pass “special laws” that allowed the creation of “independent districts.” *Id.* Vol. 2:422 (Minor); 2:424 (Wherry).

The delegates rejected the proposal because they believed imposing uniformity was inconsistent with practical differences in public education between

rural and urban communities in the 1870s and, consequently, would not provide all students in Pennsylvania with a high-quality education. *Id.* Vol. 2:422-23 (Lilly); 2:423, 425-26 (Hazzard); 2:423 (Landis); 2:423 (Simpson); 2:424-25 (Stanton). Densely populated cities such as Philadelphia had multiple public schools, divided by grade and sex, that operated the majority of the year; less-densely populated agrarian counties often had a single consolidated school that taught all local children for only a few months a year. *See id.* Vol. 2:422-26. The delegates feared that the word “uniform” would require imposing the rural system on the urban, or vice versa, to the detriment of effective education. *E.g., id.* Vol. 2:425 (Stanton).

That the delegates sought to allow each school district to meet the specific needs of its community does not suggest that they wanted to sacrifice a high-quality education at the altar of local prerogatives. To the contrary, Delegate Simpson suggested that imposing a uniform system in 1873 would actually undermine the goal of “giv[ing] an opportunity to every child in the Commonwealth to get an equal chance for a good and proper education.” *Id.* Vol. 2:423-24. And Delegate Landis, a member of the Education Committee, further observed that the word “uniform” was unnecessary: the “word ‘system,’ of itself, suggests sufficient symmetry, and a sufficient measure of uniformity” to assuage any concerns of legislative mischief. *Id.* Vol. 2:423.

In short, the delegates to the 1872-1873 Convention believed education was so important to the future of Pennsylvania that they constitutionalized a contemporary understanding of high-quality public education and required the General Assembly to provide schools with a significant amount of funding so that all Pennsylvania children, regardless of background or socioeconomic status, could grow into responsible citizens and productive members of society.

2. The 1967 amendment modernized the Education Clause and expanded the General Assembly’s duty.

The 1874 version of the Education Clause was amended in May 1967, when the Pennsylvania electorate replaced the words “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” with the words “thorough and efficient system of public education to serve the needs of the Commonwealth.” Contemporaneous records show that the General Assembly and Pennsylvania voters intended to modernize the clause by removing the outdated appropriation limit and to expand the General Assembly’s obligation by removing the age limit and reference to children. No evidence from the time supports the Legislative Respondents’ argument that the phrase gives the General Assembly singular authority to determine Commonwealth needs. *Contra* Leg. Resp’ts Concl. of Law (“COL”) ¶¶ 2411-13.

The Education Clause was amended as part of a larger effort in the 1950s and 1960s to modernize the 1874 Constitution. In July 1957, the General Assembly created a Commission on Constitutional Revision “to study the Constitution of the Commonwealth, as amended, in the light of contemporary conditions and the anticipated problems and needs of the people of the Commonwealth.” Act 400, § 3, 141st Gen. Assemb., Reg. Sess. (Pa. 1957). In its report, the so-called Woodside Commission concluded that the 1874 Constitution “contain[ed] unnecessary and undesirable provisions” that needed to be “eliminated, shorted, or rephrased.” Report of the Commission on Constitutional Revision, at 14 (Mar. 1959). The Commission proposed updating the Education Clause to read: “The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public schools, wherein all the children of the Commonwealth may be educated.” *Id.* at 152. The Commission considered the change to be what it called a “Class 3” change: an improvement to “the language and form of the Constitution,” but not one “of sufficient importance to be recommended for adoption other than as a part of a general revision of the Constitution.” *Id.* at 16.⁹

⁹ By comparison, “Class 1” changes were “of first importance, critically needed for the efficient conduct of the state government” and “Class 2” changes were “very desirable” but “not vital for the efficient conduct of the state government.” *Id.*

The Woodside Commission report received little public or legislative attention. Pa. Bar Ass’n, *Pennsylvania Constitutional Revision 1966 Handbook* (“1966 PBA Handbook”), at viii (Sept. 12, 1966) (Introductory Note of W. Walter Braham, Pennsylvania Bar Association President).¹⁰ Believing this lack of action stemmed from the Pennsylvania legal community’s lack of support, the Pennsylvania Bar Association’s Vice President proposed in 1961 that the PBA undertake “Project Constitution.” William A. Schnader, “*Project Constitution*”—*A Proposed Task for the Pennsylvania Bar Association*, 33(1) Pa. Bar Ass’n Q. 14, 14-20 (Oct. 1961). The purpose of Project Constitution was “to study the Constitution in light of the Woodside Commission’s report and to make the modernization of Pennsylvania’s State Constitution a goal which must be achieved.” 1966 PBA Handbook at iii.

To carry out Project Constitution, the PBA created fourteen committees composed of nearly 300 Pennsylvania judges and attorneys. *Id.* One committee was tasked solely with education. In its interim report, the Education Committee endorsed the Woodside Commission’s proposed language for the Education Clause but expressed concern that the language “wherein all the children of the Commonwealth may be educated” might “raise a question whether the public

¹⁰ Obtained from Jenkins Law Library.

schools could be used for adult education.” *Report of Committee No. 10 on Education*, 33(4) Pa. Bar Ass’n Q. 365, 466-67, 469 (June 1962). Noting the need to retrain unemployed workers displaced by automation, the Committee wrote that “there should be no restriction on the Legislature’s right to make provision for such retraining.” *Id.* at 467. In its final report, the Education Committee recommended the Education Clause “be reworded” into the language that governs today: “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.” *Report of Committee No. 10 on Education*, 4(2A) Pa. Bar Ass’n Q. 147, 304 (Jan. 1963). The Committee explained simply that “the system of public education should not necessarily be limited to serve the needs of children as the Constitution now provides.” *Id.* at 305.

Ultimately, Project Constitution recommended that the Constitution “be amended article by article.” 1966 PBA Handbook at iii-iv. It prepared twelve resolutions for the General Assembly that together would “provide Pennsylvania with a modernized Constitution.” *Id.* The amended Education Clause was included in a longer resolution that proposed to consolidate Articles III, X, and XI of the 1874 Constitution into a single Article III on Legislation. Pa. Bar Ass’n, *Highlights of the Twelve Resolutions Presented to the 1963 Pennsylvania Legislature*, at 9

(1963).¹¹ In a document providing a “readable” description of the resolutions, the

PBA explained that:

As far as Education is concerned, the only suggested change would broaden the duty of the General Assembly. It is now enjoined by the Constitution to maintain and support a fair and efficient system of public education “wherein all the children of this Commonwealth above the age of six years may be educated”, and—of all things—to “appropriate at least \$1 million each year for that purpose”! The Bar Association’s proposal would require the Legislature to set up a system of public education “to serve the needs of the Commonwealth”. There would be no amount specified for appropriations for this purpose.

Id. at Introduction, 10. A 1963 guide created by the Pennsylvania Council of Republican Women similarly described the change as “broaden[ing] the duty of the General Assembly” and “express[ing] more precisely the intent of the present Article X, Section 1, as it has been interpreted and applied.” Pa. Council of Republican Women, *Guide for Study of Proposals for a Revised Constitution for Pennsylvania Presented to the 1963 Sessions of the Legislature by the Pennsylvania Bar Association Pt. II*, at 5 (May 15, 1963).¹²

The PBA’s twelve proposed resolutions were first presented to the General Assembly in 1963, but the legislature chose to call for a constitutional convention instead, which the electorate rejected. 1966 PBA Handbook at iv. In response, Governor Scranton in December 1963 appointed a Commission on Constitutional

¹¹ Obtained from Jenkins Law Library.

¹² Obtained from Jenkins Law Library.

Revision to “examine the various proposals for amendment which are currently being urged for adoption by the Legislature.” Report of the Governor’s Commission on Constitutional Revision with Recommendations of Resolutions, at i, v (Jan. 24, 1964).¹³ The Governor’s Commission endorsed the version of the Education Clause proposed by the PBA. *Id.* at vi, 13-14.

The PBA’s twelve resolutions were reintroduced in the 1964 General Assembly, but only two (not involving education) were ultimately adopted by the full legislature. 1966 PBA Handbook at v. In response, the PBA reviewed and modified the remaining ten resolutions before submitting them to Governor Scranton recommending their introduction in the 1965 General Assembly. Pa. Bar Ass’n, *Report of the Special Committee on Project Constitution*, at ii, v (Dec. 7, 1964).¹⁴ In doing so, the PBA made no changes to the proposed Education Clause. *Id.* at 6.

In early 1965, Governor Scranton “appointed a non-partisan citizens’ committee,” which in turn formed a nonprofit organization, A Modern Constitution for Pennsylvania, Inc., “to implement programs of citizen education on the purpose and substance of the proposed amendments.” Pa. Econ. League, *Comparison of*

¹³ Obtained from Jenkins Law Library.

¹⁴ Obtained from Jenkins Law Library.

Proposed New Constitutional Provisions with Pennsylvania's Present

Constitution, Revised Edition (July 1965) (Forward, Apr. 1965).¹⁵ This nonprofit organization asked the Pennsylvania Economy League to prepare a report comparing the current and proposed constitutions, along with “brief factual statements setting forth the differences, if any, between the proposed and the present provisions.” *Id.* For the Education Clause, PEL observed that the PBA’s proposed change would “eliminate the mandate for appropriations of at least one million dollars a year (meaningless today) and would broaden the scope of public education without limitation as to age (six years) or ‘schools.’” *Id.* at 26.

In March 1965, the PBA’s proposed change to the Education Clause was introduced in the General Assembly as part of what became Joint Resolution 9, “[p]roposing that articles three, ten and eleven of the Constitution of the Commonwealth of Pennsylvania relating to legislation be consolidated and amended.” Joint Res. No. 9, S.B. 532, 149th Gen. Assemb., Reg. Sess. (Pa. 1965). As the resolution was considered, neither house discussed the subject of education or the content of the Education Clause.¹⁶ Instead, Joint Resolution 9 passed the

¹⁵ Obtained from Jenkins Law Library.

¹⁶ See 1 Pa. Leg. J. Senate 281, 286 (Mar. 23, 1965); 1 Pa. Leg. J. Senate 591, 602, 606 (June 3, 1965); 1 Pa. Leg. J. Senate 651, 654 (June 16, 1965); 1 Pa. Leg. J. Senate 715, 726-27 (June 28, 1965); 1 Pa. Leg. J. House 1059, 1060 (June 29, 1965); 1 Pa. Leg. J. House 2777, 2784 (Dec. 15, 1965); 1 Pa. Leg. J. House

Senate 27-20 and the House 201-1 with the same language proposed by the PBA in 1963: “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.” *Id.*

In September 1966, the PBA issued a handbook that summarized the progress of constitutional revision and provided commentary. *See* 1966 PBA Handbook. On the Education Clause, the PBA reiterated that the proposed language would expand the General Assembly’s constitutional obligation:

The Legislature’s duty as to education would be broadened. Instead of being mandated to provide for a system of education wherein all children of the state above the age of six years may be educated, the amendment would require the Legislature to maintain and support a system of education “to serve the needs of the Commonwealth”. Also, the ridiculous provision that the Commonwealth shall appropriate at least one million dollars a year for maintaining the public schools would be eliminated.

Id. at 28. A few months later, Modern Constitution for Pennsylvania, Inc., described the change as “requir[ing] the General Assembly to maintain and support a system of public education for everyone, replacing the present obsolete requirement of at least \$1 million a year for public schools for children over six.”

2827, 2852 (Dec. 16, 1965); 1 Pa. Leg. J. House 2875, 2880-82 (Dec. 17, 1965); 1 Pa. Leg. J. House 2925, 2929-31 (Dec. 20, 1965); 1 Pa. Leg. J. House 2964, 2977 (Dec. 21, 1965); 1 Pa. Leg. J. Senate 1555, 1565 (Dec. 22, 1965).

Modern Constitution for Pa., Inc., *Halfway There: An Interim Report on Constitutional Revision*, at 6 (Jan. 1967).¹⁷

Consistent with the amendment procedure of Article XI § 1, the resolution containing the change to the Education Clause was reintroduced in the 1967 General Assembly as part of what became Joint Resolution 3. 1966 PBA Handbook at v-vii; M. Nelson McGeary, *Pennsylvania's Constitutional Convention in Perspective*, 41 Pa. Bar Ass'n Q. 175, 176 (Jan. 1970); Joint. Res. No. 3, S.B. 4, 151st Gen. Assemb., Reg. Sess. (Pa. 1967). Joint Resolution 3 passed the Senate 48-0 and the House 201-1 with limited debate and no amendments.¹⁸ The only legislator to mention education described the changed language as follows:

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.

1 Pa. Leg. J. House 63, 80 (Jan. 30, 1967) (statement of Rep. Beren).

¹⁷ Obtained from Jenkins Law Library.

¹⁸ See 1 Pa. Leg. J. Senate 1, 12, 14, 21 (Jan. 3, 1967); 1 Pa. Leg. J. Senate 23, 23 (Jan. 4, 1967); 1 Pa. Leg. J. Senate 29, 35 (Jan. 16, 1967); 1 Pa. Leg. J. House 39, 40 (Jan. 17, 1967); 1 Pa. Leg. J. House 43, 44 (Jan. 23, 1967); 1 Pa. Leg. J. House 49, 53 (Jan. 24, 1967); 1 Pa. Leg. J. House 63, 80-82 (Jan. 30, 1967); 1 Pa. Leg. J. Senate 77, 77 (Jan. 31, 1967).

On May 16, 1967, a majority of the electorate ratified the modern form of Article III and the Education Clause, making them part of the Commonwealth's Constitution. *Tabulation of Votes Cast on Constitutional Primary Election of May 16, 1967 Proposals*, Debates of the Pa. Constitutional Convention of 1967-1968 (Vol. I) (Dec. 1969);¹⁹ Governor of Pennsylvania, *Proclamation, Constitutional Amendment—Articles III, X, and XI* (July 7, 1967).²⁰

As this history demonstrates, at no point did the General Assembly or contemporary advocates suggest that the 1967 amendment would grant the legislature greater deference or unique authority to determine Commonwealth needs. Instead, all records show that the change modernized the Education Clause and expanded the legislature's constitutional obligation.

C. Pennsylvania case law recognizes that the General Assembly must provide students with a high-quality, contemporary public education.

The Supreme Court's conclusion in *William Penn* that this case is justiciable marked a sea change in Education Clause jurisprudence; consequently, earlier precedent dealing with the clause should be relied on with caution. Nevertheless,

¹⁹ Obtained from Jenkins Law Library.

²⁰ Voters also approved the six other amendments to the Constitution as well as a limited constitutional convention to address four controversial topics. McGearry at 176. Because the Education Clause had already been amended and because the convention was limited, education was not discussed during the 1967-1968 Constitutional Convention.

those decisions can still assist with understanding its contours. *See League of Women Voters*, 178 A.3d at 802-03 (citing *Edmunds*, 586 A.2d at 895). And a review of earlier decisions—to the extent they were not overruled by *William Penn*—buttresses several of the key points from the textual and historical analyses above.

First, the Supreme Court has consistently held that the duty imposed by the Education Clause rests on the legislature alone and cannot be pushed onto local officials. It has held that the “school system, or the school districts, then, are but agencies of the state Legislature to administer this constitutional duty.” *Wilson v. Sch. Dist. of Philadelphia*, 195 A. 90, 94 (Pa. 1937). As a result, the “legislative duty . . . is certainly no less imperative where the school districts are but carrying out what the legislature itself specifically authorized them to undertake.”

Greenhalgh v. Woolworth, 64 A.2d 659, 664 (Pa. 1949). It does not flow from this conclusion that the Education Clause requires uniformity of funding or identical curricula. *William Penn*, 170 A.3d at 449. It simply implies that, if the Commonwealth’s public schools do not live up to the standard of the Constitution, the legislature cannot point the finger at someone else.

Second, the courts have recognized that the requirement to provide a “thorough and efficient” education was intended to be a rigorous one. Early on, the Supreme Court recognized that this obligation was added to bring about significant

improvements in the Commonwealth's educational system: "The school laws, as administered [prior to the 1874 Constitution], had not accomplished nearly to the full extent the purpose of its founders. Hence the mandate of the new constitution." *In re Walker*, 36 A. at 149.²¹ Decades later, the Court referred to the constitutional obligation as "a positive mandate that no Legislature could ignore." *Malone*, 197 A. at 352. It continued:

The power over education is an attribute of government that cannot be legislatively extinguished. It cannot be bargained away or fettered. Its benefits through 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.

Id.

Moreover, the concept of "efficiency" was understood by courts of the time to denote "effectiveness." *See supra* Part I.A.2. Given the expressed concerns that the prior system was *not* effectively serving students, *see In re Walker*, 36 A. at 28

²¹ Four years before *In re Walker*, the Court described the obligation thusly:

The maintenance of the public schools under these constitutional provisions imposed an obligation to erect and maintain suitable buildings, to furnish conveniences and equipments reasonably necessary to promote the work of education, to provide and employ competent teachers, and to do all the necessary things, that the poor may be taught gratuitously; or, in the words of the present constitution, that the people may have a thorough and efficient system of public schools.

McLeod v. Cent. Normal Sch. Ass'n of Pennsylvania, 25 A. 1109, 1110 (Pa. 1893).

(“The school system had [prior to 1874] been in operation 40 years, yet statistics demonstrated that a large percentage of even Pennsylvania born children grown to manhood and womanhood under the public school system were illiterate.”), this reading of “efficient” is the only plausible one.²²

Third, decisions of the Supreme Court have consistently recognized that educational needs are constantly changing and that the specific requirements of the Education Clause must similarly evolve. While the addition of the phrase “to meet the needs of the Commonwealth” underscores this point, the Court first recognized this reality decades before that language was added. *Malone*, 197 A. at 353 (“The very essence of this section is to enable successive Legislatures to adopt a changing program to keep abreast of educational advances.”); *see also Danson v. Casey*, 399 A.2d 360, 366 (Pa. 1979). Thus, any standard for evaluating compliance with the Education Clause must consider whether students are receiving a contemporary education, consistent with the text and history of the provision.

Finally, in discussing the purpose of the Education Clause—and the “needs of the Commonwealth” more generally—the Supreme Court has emphasized the

²² For unclear reasons, the *Walker* Court’s observation is in some tension with pronouncements by the 1872-1873 Convention delegates. *See supra* Part I.B.1.

civic value of education; that is, the necessity of educating all students in order to allow them to be full participants in our democracy. *See William Penn*, 170 A.3d at 424 (“Most notably, delegates to the [1873] convention appear to have linked the importance of public education to the success of democracy.”); *Malone*, 197 A. at 352 (“Education is today regarded as one of the bulwarks of democratic government. Democracy depends for its very existence upon the enlightened intelligence of its citizens and electors.”). Such statements are not mere platitudes and should not be dismissed in evaluating whether the legislature has fulfilled its obligations. In assessing compliance with the Education Clause, any analysis that focuses exclusively on outcomes relating to employment and other economic measures, without considering the social and democratic benefits of education, is well off the mark.

D. Other States have interpreted their constitutions to impose similar requirements.

High courts in many of Pennsylvania’s sister States have spent decades interpreting similar language in their state constitutions and they have likewise concluded that the legislature must adequately fund a public education system that provides a comprehensive, effective, and contemporary education. Their decisions offer yet another resource. *See League of Women Voters*, 178 A.3d at 802-03 (citing *Edmunds*, 586 A.2d at 895); *William Penn*, 170 A.3d at 453.

For example, the New Jersey Constitution mandates the legislature to “provide for the maintenance and support of a thorough and efficient system of free public schools.” N.J. Const. art. VIII § I ¶ 1. The New Jersey Supreme Court has interpreted this provision to obligate the legislature to “provide ‘that educational opportunity which is needed in the contemporary setting to equip a child for his role as a citizen and as a competitor in the labor market,’” which means “that poorer disadvantaged students must be given a chance to be able to compete with relatively advantaged students.” *Abbott by Abbott v. Burke*, 575 A.2d 359, 372 (N.J. 1990) (quoting *Robinson*, 303 A.2d at 295). Because the “constitutional mandate does not allow” New Jersey “to consign poorer children permanently to an inferior education on the theory that they cannot afford a better one or that they would not benefit from it,” satisfying the constitutional minimum “must account for the needs of the students.” *Id.* at 363, 386. The court went on to find that poorer urban school districts were failing to provide a thorough and efficient education and their students were not “able to participate fully as citizens and workers in our society” and not “able to achieve any level of equality in that society with their peers from the affluent suburban districts.” *Id.* at 408.

Similarly, the West Virginia Constitution requires the legislature to provide “for a thorough and efficient system of free schools.” W. Va. Const. art. XII § 1. The Supreme Court of Appeals of West Virginia defined the clause as a system

that “develops, as best the state of education expertise allows, the minds, bodies and social morality of its charges to prepare them for useful and happy occupations, recreation and citizenship, and does so economically.” *Pauley v. Kelly*, 255 S.E.2d 859, 877 (W. Va. 1979). To test the existing educational system, the court developed several “high quality education standards,” including eight substantive skills that every child should develop, as well as “supportive services,” such as “good physical facilities” and “instructional materials and personnel,” that are necessary for constitutional compliance. *Id.* at 877-78.

The Kentucky Constitution requires its legislature to “provide for an efficient system of common schools throughout the State.” Ky. Const. § 183. The Kentucky Supreme Court concluded that the “essential, and minimal, characteristics of an ‘efficient’ system” includes, among other things, providing “equal educational opportunities to all Kentucky children, regardless of place of residence or economic circumstances” and having “as its goal to provide each and every child with at least” seven substantive capabilities. *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 212-13 (Ky. 1989). The court emphasized that “[e]ach child, *every child*, in this Commonwealth must be provided with an equal opportunity to have an adequate education.” *Id.* at 211.²³

²³ See also, e.g., *Campbell Cnty. Sch. Dist.*, 907 P.2d at 1258 (interpreting “a thorough and efficient system of public schools,” Wyo. Const. art. VII § 9, to mean

These and other States have recognized that public education is vital to a functioning democracy and a robust economy. *E.g.*, *Rose*, 790 S.W.2d at 211 (“Any system of common schools must be created and maintained with the premise that education is absolutely vital to the present and to the future of our Commonwealth. . . . No tax proceeds have a more important position or purpose than those for education in the grand scheme of our government. The importance of common schools and the education they provide Kentucky’s children cannot be overemphasized or overstated.”); *Abbott*, 575 A.2d at 411-12 (“So it is not just that their future depends on the State, the state’s future depends on them.”); *Campbell Cnty. Sch. Dist.*, 907 P.2d at 1258-59 (“[S]imilar education provisions were found in every state constitution, reflecting the contemporary sentiment that education was a vital and legitimate state concern, not as an end in itself, but because an educated populace was viewed as a means of survival for the democratic principles of the state”).

a system “marked by full detail or complete in all respects and productive without waste” and “reasonably sufficient for the appropriate or suitable teaching/education/learning of the state’s school age children”); *Davis v. State*, 804 N.W.2d 618, 627 (S.D. 2011) (interpreting “a thorough and efficient system of common schools throughout the state,” S.D. Const. art. VIII § 15, and other language to mean “a free, adequate, and quality public education which provides them with the opportunity to prepare for their future roles as citizens, participants in the political system, and competitors both economically and intellectually”).

Many States have also held that constitutional standards for public education must evolve over time. *E.g.*, *Robinson*, 303 A.2d at 295 (“The Constitution’s guarantee must be understood to embrace that educational opportunity which is needed in the contemporary setting to equip a child for his role as a citizen and as a competitor in the labor market.”); *DeRolph v. State*, 728 N.E.2d 993, 1001 (Ohio 2000) (“What was deemed thorough and efficient when the state’s Constitution was adopted certainly would not be considered thorough and efficient today.”); *Campbell Cnty. Sch. Dist.*, 907 P.2d at 1278 (“The definition of a proper education is not static, but will change.”); *McCleary v. State*, 269 P.3d 227, 231 (Wash. 2012) (“The program of basic education is not etched in constitutional stone. The legislature has an obligation to review the basic education program as the needs of students and the demands of society evolve.”).

Finally, many States have concluded that a legislature constitutionally mandated to provide a public education system cannot use local funding as a substitute for providing a statewide system that satisfies the constitutional minimum for all students. *E.g.*, *Rose*, 790 S.W.2d at 211-12 (“Such local efforts may not be used by the General Assembly as a substitute for providing an adequate, equal and substantially uniform educational system throughout this state.”); *Abbott*, 575 A.2d at 368-69 (stating that “excess spending” in some districts “could not somehow be allowed to mask a failure to achieve thoroughness

and efficiency in other districts”); *Pauley*, 255 S.E.2d at 689 (stating that all fifteen states with a thorough and/or efficient clauses have “found the clause to make education a state, rather than local, responsibility” and collecting cases).

E. The Court should not credit the Legislative Respondents’ arguments for deference.

The Education Clause does not grant the General Assembly sole discretion to determine the needs of the Commonwealth, and it does not require this Court to give the legislature deference in determining the level of funding necessary to satisfy the “thorough and efficient” standard. *Contra* Leg. Resp’ts COL ¶¶ 2411-13. While Legislative Respondents assert a right to non-reviewable discretion, they have identified no authority in the Education Clause or the Constitution generally that gives them a monopoly on determining the needs of the Commonwealth. *See id.* This absence is not surprising; as the Supreme Court recently affirmed, treating the General Assembly as the sole branch representing “the will of the people” is “an inappropriate departure from basic constitutional principles of checks and balances” and “offensive to the separation-of-powers doctrine.” *Carter v. Chapman*, 270 A.3d 444, 461 & n.18 (Pa. 2022).

That the General Assembly does not have sole discretion is evident in the roles played by other public officials and government bodies who help define the needs of the Commonwealth. The Governor is “an integral part of the lawmaking power of the state,” *id.* at 461 n.18 (quotations omitted), and must approve any

education-related legislation passed by the General Assembly, *see* Pa. Const. art. IV § 15. The Department of Education administers all laws concerning “the establishment, maintenance, and conduct of the public schools,” “prescribe[s] minimum courses of study for the public schools,” gives advice and support to school districts “to promote the cause of education,” and oversees the safety of school buildings, among other responsibilities. 71 Pa. Stat. § 352. The Secretary of Education oversees the Department and remains the only cabinet-level officer named in the Constitution—neither the General Assembly nor the Governor have authority to eliminate him. Pa. Const. art. IV §§ 1, 8. The State Board of Education “establish[es] standards governing the educational program of the Commonwealth” and “adopt[s] a master plan for higher education which shall be for the guidance of the Governor, the General Assembly, and all institutions of higher education financed wholly or in part from State appropriations,” among other responsibilities. 24 Pa. Stat. § 26-2603-B. By statutory and constitutional structure, therefore, the General Assembly cannot plausibly claim sole authority to determine the needs of the Commonwealth.

Suggesting that the Court must accept at face value the General Assembly’s assessment that it is already providing for a constitutionally sufficient public education system is a backdoor invitation to rendering the Education Clause non-justiciable. But the Supreme Court has already rejected the argument that the

legislature’s compliance with its constitutional obligation “may be graded exclusively by that body without judicial recourse.” *William Penn*, 170 A.3d at 446. Instead of “deploy[ing] a rubber stamp in a hollow mockery of judicial review,” this Court is competent to develop a “manageable standard for Education Clause compliance” and “measure the state of public education against that rubric.” *Id.* at 452-53, 456.

Even if the Court concludes that the legislature is entitled to some deference, the Legislative Respondents cannot dispute that Pennsylvania has need for an educated workforce and for citizens who pursue careers that require advanced knowledge of science, technology, and math. Not every child will go to college or work in a highly skilled field—but every child deserves the opportunity to *choose* their own path based on their skills and interests. Legislative Respondents do not have the right to predetermine that children from poorer districts have fewer (and less lucrative) career opportunities than children from wealthier districts.

And regardless of a person’s vocation, Pennsylvania has a fundamental need for an intelligent citizenry that can function in, and contribute to, our shared society. Public education prepares students “to become self-directed, life-long learners and responsible, involved citizens” and to live as adults “by attending to their intellectual and developmental needs and challenging them to achieve at their highest level possible.” 22 Pa. Code § 4.11(b). Education also promotes public

safety by reducing crime, as less-educated individuals are more likely to engage in criminal activity. Pet’rs Findings of Fact (“FOF”) ¶ 192. By extension, it reduces the fiscal and others costs associated with crime, including the costs imposed on victims and those borne by society at large, such as the high cost of incarceration. *Id.* In short, the social, economic, and democratic future of Pennsylvania depends on the education we provide our children today.

II. The General Assembly is failing its constitutional obligation.

To assess the General Assembly’s compliance with its constitutional obligations, the Court must first determine what constitutes a comprehensive, effective, and contemporary public education system that serves Pennsylvania’s needs. Mindful that public education must “keep abreast of educational advances,” *Malone*, 197 A. at 352, there is no single list of substantive content or resources that will define a constitutionally satisfactory education for all time. Instead, as with any system that must be contemporary, the elements of a comprehensive and effective education must continue to evolve along with our Commonwealth and our best understanding of how children learn.

But acknowledging that public education will evolve does not absolve the General Assembly of its responsibility to provide all Pennsylvania students with a high-quality education as it is understood now. The State Board’s description of the “[p]urpose of public education,” 22 Pa. Code § 4.11—which the Supreme

Court discussed in its decision in this case, *William Penn*, 170 A.3d at 452—can play an important role in this analysis. That section lists the “knowledge and skills” that all public school students should “develop” and includes subjects no one can reasonably dispute are essential to working in the 21st century, such as mathematics, civics and government, science and technology, and English language arts. § 4.11(g).²⁴ That section also lists the characteristics of intelligence and character that no one can reasonably dispute are necessary for living in our shared community, including the development of integrity and the ability to think critically, process information, adapt to change, and work independently and collaboratively. § 4.11(c).²⁵ These substantive elements are general enough that the Court can reasonably expect them to not significantly change, but specific enough to provide a concrete metric by which to measure Pennsylvania’s public education system.

²⁴ “Public schools provide instruction throughout the curriculum so that students may develop knowledge and skills in the following areas: (1) English language arts. (2) Mathematics. (3) Science and technology. (4) Environment and ecology. (5) Social studies (civics and government, geography, economics and history). (6) Arts and humanities. (7) Career education and work. (8) Health, safety and physical education. (9) Family and consumer science.”

²⁵ “Together with parents, families and community institutions, public education provides opportunities for students to: (1) Acquire knowledge and skills. (2) Develop integrity. (3) Process information. (4) Think critically. (5) Work independently. (6) Collaborate with others. (7) Adapt to change.”

To determine whether Pennsylvania’s public education system satisfies this constitutional minimum, the Court must examine both the resources going into and the results coming out of public schools. Petitioners and Legislative Respondents agree that the inputs are relevant, Leg. Resp’ts COL ¶¶ 2424, 2435; Pet’rs COL ¶ 43, and the Court should not conclude otherwise. Any organization is only as good as its components, be they human capital (e.g., qualified and effective teachers, administrators, and support personnel), physical capital (e.g., appropriate buildings and facilities, textbooks, technology, and lab and arts equipment), or operating frameworks (e.g., appropriate and effective class sizes, curricula, and extracurricular/co-curricular activities). Consistent with the requirement that Pennsylvania’s system of education be effective and contemporary, assessing the General Assembly’s compliance requires accounting for the modern consensus about what resources are necessary and appropriate to allow children to develop the knowledge and skills listed in Sections 4.11(c) and (g).

The evidence from Petitioner districts and Philadelphia identified many specific ways in which schools across the Commonwealth do not provide the fundamental elements of a thorough and efficient education as understood today. For example, class sizes in certain grades are often significantly larger than is educationally appropriate. Pet’rs FOF ¶¶ 724-34. District administrators often cannot hire sufficient teachers with the appropriate certifications and must

routinely rely on educators with emergency certifications. *Id.* ¶ 661. Resources are so limited that some teachers must teach multiple subjects or multiple levels of the same subject at the same time. *Id.* ¶ 653. Curricula in certain areas are inadequate, often not aligning to state standards. *Id.* ¶¶ 742-43. Schools cannot provide advanced educational opportunities, much less ensure that students have the tools to take advantage of them. *Id.* ¶¶ 748-57.

The evidence also shows that certain districts are unable to hire an adequate number of schools counselors and social workers to meet the needs of their students. *Id.* ¶¶ 691-704. School officials can offer, at best, limited academic support services, including reading specialists and after-school tutors, to assist students who need additional assistance, *id.* ¶¶ 671-81, even though students in these districts have a disproportionate need for such services, *id.* ¶ 680. Many districts do not have enough special education teachers to meet the full range of their students' needs. *Id.* ¶¶ 658-61.

No one can seriously dispute that appropriately sized classes, access to counselors and mental health resources, and a curriculum that is consistent with state standards are necessary elements of a thorough and efficient education. Yet the evidence demonstrated that Petitioners and other public school districts lack the resources to provide these necessary elements—as well as several others, ranging

from adequate facilities, *id.* ¶¶ 758-834, to early-childhood education programs, *id.* ¶¶ 629-44.

But to look only at resources going into the public education system, as Legislative Respondents urge, Leg. Resp'ts COL ¶¶ 2424, 2434-35, ignores the clear requirements of the Education Clause. The plain text of the Constitution requires Pennsylvania's public education system to be "thorough," i.e., comprehensive, and "efficient," i.e., effective. The General Assembly must "maintain and support" this system, which means it must uphold the system and allow it to thrive. And the system must "serve the needs of the Commonwealth," which includes the need for a skilled workforce, an educated electorate, and engaged citizens. The Court cannot actually evaluate whether our public schools are providing students with a comprehensive and effective education without looking to whether and what our children are actually learning. And the Court cannot actually evaluate whether the General Assembly is maintaining and supporting a system that meets Pennsylvania's needs without looking at whether our public school students are ready to go to college (if they choose), pursue a career, and contribute to our community.

Legislative Respondents argue that the Court should only determine whether Pennsylvania's education system provides students with the "opportunity" to obtain a constitutionally sufficient education. Leg. Resp'ts COL ¶ 2434. But they

ask the Court to read too little into the word “opportunity.” The opportunity to obtain a thorough and efficient education is meaningless if the public education system *cannot actually provide* a thorough and efficient education to all students, regardless of socioeconomic background.

Here, as well, the evidence shows that the General Assembly has failed to live up to its constitutional obligations. Students in the Petitioner districts and Philadelphia consistently demonstrate low levels of proficiency on Keystone and Pennsylvania System of School Assessment exams. Pet’rs FOF ¶¶ 870-72. These results are consistent with other measures of academic success; for instance, graduation rates in these districts are also consistently lower than the statewide average. *Id.* ¶¶ 889-92. Although the Constitution does not require equality of results across districts, the low levels of proficiency shown by students in Petitioners districts, coupled with the sheer size of the disparities between those districts’ performances and state averages, provides further evidence of the absence of a thorough and efficient public education system.

* * *

The evidence before the Court shows that the resources of Petitioner schools and Philadelphia are inadequate with respect to many key elements of a thorough and efficient education. It shows that educational outcomes in those districts are both significantly worse than those in other districts across the Commonwealth and

inadequate in their own right. This evidence all points to the unmistakable conclusion that the General Assembly has not lived up to its obligation to provide for the maintenance and support of a thorough and efficient system of public education.

CONCLUSION

For the foregoing reasons, this Court should rule in favor of Petitioners and conclude that the General Assembly is violating its obligations under the Education Clause to provide all Pennsylvania children with a comprehensive, effective, and contemporary public school education.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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.

Dated: May 16, 2022

/s/ Aimee D. Thomson

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CERTIFICATE OF LENGTH

I certify that this brief complies with the word count requirement set forth in this Court's Order granting the Application for Leave to File an Amicus Brief in Excess of the Word Count Limit. Excluding matters identified in Pennsylvania Rule of Appellate Procedure 2135(b), this brief is 10,489 words. I have relied on Word's word count function to determine the length of this brief.

Dated: May 16, 2022

/s/ Aimee D. Thomson

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