

IN THE SUPREME COURT OF PENNSYLVANIA

No. 46 M.A.P. 2015

WILLIAM PENN SCHOOL DISTRICT, *et al.*,

Appellants,

— v. —

PENNSYLVANIA DEPARTMENT OF EDUCATION, *et al.*,

Appellees.

Appeal from the order of the Commonwealth Court of Pennsylvania,
entered on April 21, 2015 at No. 587 M.D. 2014, which sustained
preliminary objections and dismissed the petition for review.

BRIEF OF AMICUS CURIAE
CITY OF PHILADELPHIA

CITY OF PHILADELPHIA LAW DEPARTMENT
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Dated: February 16, 2016

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INTRODUCTION

The General Assembly has a constitutional obligation to “provide for the maintenance and support of a thorough and efficient system of public education.”¹ Philadelphia submits this amicus brief to demonstrate that only a substantial increase in State funding can fulfill that obligation to the students in its School District because: (i) increasing *local* funding for the School District is not an option; and (ii) the School District’s underfunding is much worse than the numbers suggest because of the School District’s high percentage of needy students—particularly English Language Learners and students in deep poverty. The City’s plight demonstrates that the General Assembly has failed to fulfill its obligation under the Education Clause² to provide maintenance and support for a system of public education, and also that it has ignored

¹ PA CONST. art III, § 14.

² *Id.*

the Pennsylvania Constitution's Equal Protection guarantees.³ The Court can and should move to correct both violations.

STATEMENT OF INTEREST OF AMICUS CURIAE

Despite the importance of properly educating Philadelphia's children, not only to Philadelphia itself, but to the entire Commonwealth, the General Assembly has failed to enable Philadelphia to provide an adequate education to its children. Philadelphia has a limited tax base to support its schools. At the same time, it must operate schools in a high-cost urban environment and is responsible for educating a disproportionate number of the Commonwealth's needy, impoverished, and costly-to-educate students. The City has taken extraordinary efforts to raise additional local funding for its schools, but those efforts have reached the

³ See generally *Love v. Borough of Stroudsburg*, 597 A.2d 1137, 1139 (Pa. 1991) ("The equal protection provisions of the Pennsylvania Constitution are analyzed by this Court under the same standards used by the United States Supreme Court when reviewing equal protection claims under the Fourteenth Amendment to the United States Constitution.") (citing PA. CONST. art. I, §§ 1, 26, as the textual source for this right).

limits of what its businesses and citizens can sustain. Additional state funding is the only solution to the City's current school crisis.

I. Philadelphia has a dire need for effective public education.

For decades, Philadelphia schools have been chronically underfunded, understaffed, and under-served. The consequences of this to the City, to its residents, and to the Commonwealth are grave. In Philadelphia, almost three in ten of those who do not go to college live in poverty.⁴ More than one in six are unemployed.⁵

The best solution to this problem is to improve the quality of public education in Philadelphia. Three-fourths of Philadelphians currently do not graduate from college—the third highest rate of our country's 20 biggest cities.⁶ Improving public education is the last and best opportunity for

⁴ UNITED STATES CENSUS BUREAU, 2010-2014 AMERICAN COMMUNITY SURVEY 5-YEAR ESTIMATES: TABLE S1501 - EDUCATION ATTAINMENT, *available at* http://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml (last visited Feb. 1, 2016) (providing statistics about those 25 or older).

⁵ CITY OF PHILADELPHIA, FIVE YEAR FINANCIAL AND STRATEGIC PLAN FOR FISCAL YEARS 2016–2020 (2015), *available at* www.phila.gov/Newsletters/FY16FY20FiveYearPlanFINAL.pdf (last visited February 1, 2016) (hereinafter "FIVE YEAR PLAN") at 15.

⁶ FIVE YEAR PLAN at 13.

those students to receive the tools they need to make their way in life and can be achieved only with adequate State funding.

II. The General Assembly's funding scheme fails to support those school districts most in need, like Philadelphia.

Philadelphia cannot, without additional assistance from the State, provide the education to which its children are constitutionally entitled. The General Assembly's funding scheme fails to adequately address the differences between school districts. Districts like Philadelphia, Erie, and Reading receive only a few thousand dollars per child more from the state than districts like Lower Merion and Radnor Township. This scheme is irrational; poorer districts have less ability to raise money for their schools, and, at the same time, have a greater need for funding because their students require extra support. This funding system has left Pennsylvania with the most unequal distribution of education dollars of any state in the country. (Appellants' Br. 12-13).

A. The General Assembly's funding scheme barely addresses the disparities among school districts in a state where the wealthiest school district has almost 20 times the ability to pay for education as the neediest district.

School districts can only ask their businesses and residents to contribute so much to education. As a recent Pew Charitable Trusts report confirms, some school districts are fully capable of funding their own education systems. Lower Merion, for instance, has more than \$1.4 million of assessed property value to tax per student in its school district;⁷ a school district real estate tax of even 1% would raise more than \$14,000 per student. In contrast, Philadelphia has about \$189,000 per student in assessed property;⁸ to raise \$14,000 per child, it would have to impose a school district real estate tax of almost 7.5%. The current school district real estate tax rate is 0.7681%;⁹ increasing it almost tenfold simply is not feasible.

⁷ THE PEW CHARITABLE TRUSTS, A SCHOOL FUNDING FORMULA FOR PHILADELPHIA (2015), available at <http://www.pewtrusts.org/~media/assets/2015/01/philadelphiaschoolfundingreportjanuary2015.pdf> (last visited Jan. 28, 2016).

⁸ *Id.*

⁹ THE PHILADELPHIA CODE § 19-1801(3)(a.2).

This is particularly true because Philadelphia simultaneously imposes a city real estate tax of 0.6317%¹⁰ for a total real estate tax burden of 1.3998%. Just as the Philadelphia School District serves a population of needy students, the City of Philadelphia also faces tremendous financial challenges, handling disproportionately more poverty, more crime, and more social services than the State as a whole.¹¹ The same tax base that supports the School District also has to provide funding for police, fire, sanitation and other vital city services, as well as prisons, prosecutors, public health, and other county services, to one of the nation's largest and poorest cities.¹²

¹⁰ THE PHILADELPHIA CODE § 19-1301(2)(a.2).

¹¹ Philadelphia has 10.22 crimes per year per thousand residents; Pennsylvania has 3.14. Neighborhood Scout, Crime rates for Philadelphia, PA, *available at* <http://www.neighborhoodscout.com/pa/philadelphia/crime/> (last visited Feb. 11, 2016). Philadelphia's 2009-2013 poverty level was 26.5%, Pennsylvania's was 13.3%. UNITED STATES CENSUS BUREAU, STATE & COUNTY QUICKFACTS: PHILADELPHIA COUNTY, PENNSYLVANIA, *available at* <http://quickfacts.census.gov/qfd/states/42/42101.html> (last visited, Feb. 11, 2016).

¹² For example, one recent study noted: "In all other Pennsylvania and most other large urban US districts, the local share of very expensive and largely redistributive county services such as welfare, courts, and prisons, are shared with more affluent suburban jurisdictions[.]" JOSEPH P. MCLAUGHLIN, JR. & MEGHAN E. RUBADO, *HOW WELL DOES PHILADELPHIA* (*footnote continued on next page*)

The General Assembly's current funding scheme does not address this disparity in local resources. Despite Lower Merion having more than 7.5 times the property base as Philadelphia, Philadelphia received only 2.2 times more funding from the State than did Lower Merion.¹³ Similarly, Philadelphia has about half the assessed real property value of the average district in the Commonwealth,¹⁴ but Philadelphia receives only slightly more funding from the State than the average district. For the 2012-13 school year, Philadelphia received \$6,574 per student from the State, while the State average was \$5,235.¹⁵ That small amount of extra money is grossly insufficient to address the gap between Philadelphia's limited local resources and the acute needs of its student population.

SUPPORT ITS PUBLIC SCHOOLS? A NEW PERSPECTIVE (January 2016), *available at* <http://www.cla.temple.edu/corp/files/2016/01/Tax-Effort-Philly-Web.pdf> (last visited, Feb. 11, 2016).

¹³ THE PEW CHARITABLE TRUSTS, A SCHOOL FUNDING FORMULA FOR PHILADELPHIA (2015), *available at* <http://www.pewtrusts.org/~media/assets/2015/01/philadelphiaschoolfundingreportjanuary2015.pdf> (last visited Jan. 28, 2016).

¹⁴ *Id.*

¹⁵ *Id.*

B. Providing education in Philadelphia is far more expensive than average because Philadelphia’s children face profound challenges before they even arrive at school.

Philadelphia is one of the nation’s poorest cities.¹⁶ Among the country’s largest cities, it has the highest rate of deep poverty – reflecting incomes of less than half of the poverty line—in the country at 12.2%.¹⁷ About 36% of Philadelphia’s children live in poverty.¹⁸ Last year, more than 80% of Philadelphia’s public-school students qualified for free or discounted lunches,¹⁹ almost double the most-recently-reported Commonwealth average of 41.5%.²⁰

¹⁶ Of our country’s 20 largest cities, Philadelphia’s poverty rate is lower than only Detroit’s and Memphis’s. FIVE YEAR PLAN at 14.

¹⁷ FIVE YEAR PLAN at 13 (stating the rate in Philadelphia); Alfred Lubrano, *Phila. rates highest among top 10 cities for deep poverty*, THE PHILADELPHIA INQUIRER, Sept. 26, 2014, available at http://articles.philly.com/2014-09-26/news/54322611_1_deep-poverty-poverty-line-south-philadelphia (comparing Philadelphia to other major cities).

¹⁸ FIVE YEAR PLAN at 14.

¹⁹ THE PEW CHARITABLE TRUSTS, A SCHOOL FUNDING FORMULA FOR PHILADELPHIA (2015), available at <http://www.pewtrusts.org/~media/assets/2015/01/philadelphiaschoolfundingreportjanuary2015.pdf> (last visited Jan. 28, 2016).

²⁰ NATIONAL CENTER FOR EDUCATION STATISTICS, NUMBER AND PERCENTAGE OF PUBLIC SCHOOL STUDENTS ELIGIBLE FOR FREE OR REDUCED-PRICE LUNCH, available at https://nces.ed.gov/programs/digest/d14/tables/dt14_204.10.asp (last visited Jan. 28, 2016).

The pervasive poverty among Philadelphia's school children poses a tremendous challenge because poverty impacts virtually every aspect of a child's life. For example, almost half of children living in impoverished households face some degree of food insecurity.²¹ Hungry children struggle to focus on their schoolwork and are more likely to be disruptive. Likewise, Philadelphia has thousands of homeless school children, almost double the rate in the State as a whole.²² Homeless children cannot possibly put education first; even their most basic needs are under threat each day, and they often are shuttled among several schools in the course of a single

²¹ EDUCATIONAL TESTING SERVICE, *POVERTY AND EDUCATION: FINDING THE WAY FORWARD* (2015), available at https://www.ets.org/s/research/pdf/poverty_and_education_report.pdf (last visited Jan. 28, 2016).

²² In the 2012-13 school year, Philadelphia had four thousand homeless school children, more than 20 percent of the state's total, although it educates only 11 percent of the state's students. Ethan Cohen, *One Step Away: Student homelessness on the rise*, THE PHILADELPHIA INQUIRER, Dec. 9, 2014, available at http://www.philly.com/philly/blogs/one_step_away/One-Step-Away-Student-homelessness-on-the-rise.html (last visited Jan. 29, 2016) (quoting United States Department of Education statistics on homelessness); PA. DEP'T OF EDUCATION, *PUBLIC SCHOOL ENROLLMENTS 2012-2013*, available at <http://www.education.pa.gov/Documents/Data%20and%20Statistics/Enrollment/Public%20School/Enrollment%20Public%20Schools%202012-13.xlsx> (last visited Jan. 29, 2016) (reporting enrollment numbers).

school year. Even making it in to school is a challenge. Facing such profound problems, poor children require additional resources to acquire even a basic education.

Another factor in the School District's need for resources is its high percentage of English Language Learners. A child's ability to receive a basic education depends on her ability to communicate in English. As the United States Supreme Court has found:

Basic English skills are at the very core of what [] public schools teach. Imposition of a requirement that, before a child can effectively participate in the educational program, he must already have acquired those basic skills is to make a mockery of public education. We know that those who do not understand English are certain to find their classroom experiences wholly incomprehensible and in no way meaningful.

Lau v. Nichols, 414 U.S. 563, 566 (1974).²³ Philadelphia must devote tremendous resources to address this need. Last year, almost one in ten Philadelphia public-school students was enrolled in an English

²³ See also UNITED STATES DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS, POLICY UPDATE ON SCHOOLS' OBLIGATIONS TOWARD NATIONAL ORIGIN MINORITY STUDENTS WITH LIMITED-ENGLISH PROFICIENCY (Sept. 27, 1991), available at <http://www2.ed.gov/about/offices/list/ocr/docs/lau1991.html> (last visited Jan. 28, 2016) (discussing schools' obligations under *Lau v. Nichols*).

Language Learners program.²⁴ This compared to an average of just 2.7% in the Commonwealth in 2012–13.²⁵

Philadelphia also faces a variety of other challenges. Among others, one in five of our high school students is, or has been, under the supervision of the Department of Human Services or involved in the Juvenile Justice System, or both.²⁶ All of these challenges make education much more difficult and expensive to provide.

²⁴THE SCHOOL DISTRICT OF PHILADELPHIA, OPEN DATA INITIATIVE: ENROLLMENT AND DEMOGRAPHICS (SY 2009–2010 to 2015–2016), *available at* http://webgui.phila.k12.pa.us/offices/o/open-datainitiative/documents/enrollment-and-demographics_20150317.zip (last visited Jan. 28, 2016).

²⁵ NATIONAL CENTER FOR EDUCATION STATISTICS, NUMBER AND PERCENTAGE OF PUBLIC SCHOOL STUDENTS PARTICIPATING IN PROGRAMS FOR ENGLISH LANGUAGE LEARNERS, *available at* https://nces.ed.gov/programs/digest/d14/tables/dt14_204.20.asp (last visited Jan. 28, 2016).

²⁶ CHILDREN’S HOSPITAL OF PHILADELPHIA POLICY LAB, SUPPORTING THE NEEDS OF STUDENTS INVOLVED WITH THE CHILD WELFARE AND JUVENILE JUSTICE SYSTEM IN THE SCHOOL DISTRICT OF PHILADELPHIA (June 2014), *available at* http://policylab.chop.edu/sites/default/files/pdf/publications/PolicyLab_Report_Supporting_Students_Involved_with_Child_Welfare_June_2014.pdf (last visited Jan. 29, 2016).

C. Squeezed for funding and facing tremendous burdens, Philadelphia is unable to pay for the basic needs of its schools.

Caught between inadequate funding and one of the neediest student bodies in the Commonwealth, the City's schools have had to choose which limb to hack off to stay alive. Between cuts to the City's teaching staff, nurses, librarians, assistant principals, and support staff, the Philadelphia School District struggles even to provide for the fundamental necessities of education. Without the intervention of the City's new \$2-a-pack cigarette tax, the City was at risk in 2014 of laying off so many teachers that class sizes would exceed 40.²⁷ The City cannot provide an adequate education with such inadequate resources.

The constraints also pose a threat to the health of Philadelphia's children. Cuts to nursing coverage have been particularly severe. Last year, Philadelphia had 31 fewer full-time equivalent nursing positions than it did schools, leaving many schools to do without nurses at all, or to be forced to

²⁷ Kristen A. Graham, *Hite: Layoffs if no cigarette tax by Aug. 15*, THE PHILADELPHIA INQUIRER, July 11, 2014, available at http://articles.philly.com/2014-07-11/news/51307934_1_district-officials-state-senate-school-officials (last visited Jan. 28, 2016).

share a part-time nurse.²⁸ Nursing is not something that would be a nice amenity in Philadelphia public schools; it is essential. For instance, one quarter of our students report having asthma.²⁹ Asthma can be life-threatening, and the presence of a nurse sometimes can be the difference between life and death. Several of our students have died in schools that had no nurse on duty.³⁰ Even putting aside these tragedies and other significant health problems, the nursing shortage means that other staff—

²⁸ See THE SCHOOL DISTRICT OF PHILADELPHIA, FY 2015–16 CONSOLIDATED BUDGET at 240 (April 2015), *available at* http://webgui.phila.k12.pa.us/uploads/ZH/2f/ZH2fOGACmEKyUR3mwTKHXA/SDPBook_Web_v4.pdf (last visited February 1, 2016) (showing that there were 187.0 full-time equivalent nursing positions); THE SCHOOL DISTRICT OF PHILADELPHIA, ABOUT US: DISTRICT SCHOOLS, *available at* <http://www.philasd.org/about/#schools> (last visited Feb. 1, 2016) (showing that there are 218 total school-district schools); Kristen A Graham, *New this year: Philly schools with no nurses*, THE PHILADELPHIA INQUIRER, Oct. 13, 2015, *available at* http://articles.philly.com/2015-10-13/news/67344969_1_school-nurse-nurse-coverage-district-nurse (last visited Jan. 28, 2016) (discussing nursing coverage).

²⁹ THOMAS JEFFERSON UNIVERSITY HEALTH POLICY NEWSLETTER, ASTHMA PREVALENCE IN THE PHILADELPHIA PUBLIC SCHOOLS, *available at* <http://jdc.jefferson.edu/cgi/viewcontent.cgi?article=1377&context=hpn> (last visited Feb. 1, 2016).

³⁰ See generally Trymaine Lee, *Another Philadelphia student dies at a public school with no nurse*, MSNBC, May 22, 2014, *available at* <http://www.msnbc.com/msnbc/another-student-dies-school-no-nurse> (last visited Jan. 29, 2016).

often principals and teachers—must shoulder the burden of dispensing medications, taking temperatures, and treating injuries. It takes them away from their primary task of educating.

Even basic janitorial services are under threat. The City's newly appointed Chief Education Officer—Otis Hackney—was appointed to that position immediately after serving as principal of South Philadelphia High School. South Philadelphia educates about 800 students, and is a five-story building occupying an entire city block. Due to underfunding, it has only a single custodial worker. One person cannot maintain the school by himself; even ensuring the cleanliness of the bathrooms and the availability of toilet paper was impossible.³¹

Mr. Hackney's experiences illustrate the inequities that prompt this amicus brief. Before taking the job as principal of South Philadelphia High School, he was the principal at Springfield High School in Montgomery County. Once he took the job as principal in Philadelphia, he went from a school that had swimming and a water polo team to a school where there were no funds for music or art.

³¹ (Hackney Aff., Exhibit A hereto).

The inadequate maintenance that has resulted from underfunding has been documented. The City Controller, an independently elected official, often creates reports about the condition of the City's schools. In 2015, his office found that, at the schools his office inspected:

- 75% of the schools had fire hazards.
- 95% of the schools had water damage from leaking water.
- 65% of the schools were missing working fire extinguishers.
- 70% of the schools had dangerous tripping hazards.
- 75% of the schools had damaged masonry.
- 20% of the schools had unsanitary bathrooms as a result of toilets that did not work.
- 30% of the schools had problems with their heating systems.
- Numerous other problems existed, ranging from un-encased asbestos pipes to clogged drains to damaged flooring.³²

The Controller's office also noted that many of the problems it had found in its prior reports did not get fixed.³³ There are simply not the resources to adequately maintain our school buildings.

³² OFFICE OF THE CONTROLLER OF THE CITY OF PHILADELPHIA, PHILADELPHIA SCHOOL DISTRICT FOLLOW-UP REVIEW OF CONDITIONS AT SCHOOL BUILDINGS (June 2015), *available at* <http://www.philadelphiacontroller.org/publications/SchoolFacilitiesReview2015.pdf> (last visited Jan. 28, 2016).

³³ *Id.*

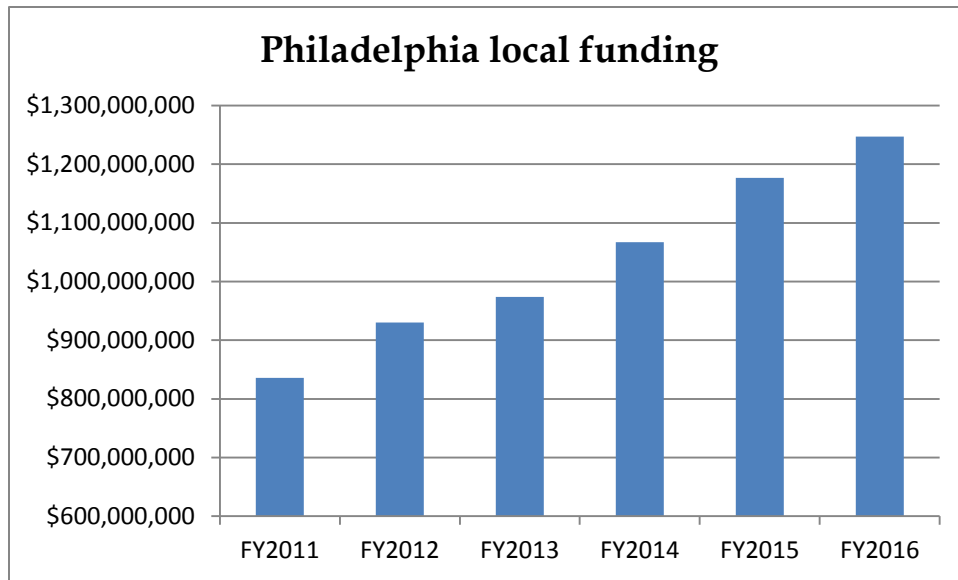
D. The City cannot solve this problem on its own.

The only solutions to the Philadelphia School District's financial plight cannot be to further increase local funding or to further cut school budgets. The City has made extraordinary efforts to increase local funding for the School District over the last decade, but does not have a strong enough tax base to compensate fully for the State's failure to meet its obligations to school children.

Over the past several years, the City has consistently worked to provide more funding for the school district. In fiscal year 2012, the City increased the General Fund contribution to the school district from \$38.6 million to \$48.9 million, while increasing the real estate taxes sent to the school district by an additional \$60.1 million (totaling \$930 million, **up 11% from FY2011**). In fiscal year 2013, the City increased the General Fund contribution to the schools from \$48.9 million to \$68.9 million, while increasing the School District Use and Occupancy Tax rate from 4.62% to 5.51% of the property's assessed value to provide an additional \$20.1 million to the School District (totaling \$974 million, **up 16% from FY2011**). In fiscal year 2014, the City made a one-time borrowing of \$27 million on

behalf of the School District (total \$1,052.8 million, **up 26% from FY2011**).

In fiscal year 2015, the City doubled its local sales tax from one percent to two percent to raise an additional \$120 million for the School District, increased its General Fund grant from \$69 million base to a total \$99.1 million (through a borrowing), and imposed a new \$2-a-pack cigarette tax to raise \$49 million (in the initial partial year) (total \$1,148.8 million, **up 37% from FY2011**). In fiscal year 2016, the City has increased the School District real estate tax rate to produce an additional \$25 million, increased its General Fund grant from \$69 million to a total of \$104 million through increased City real estate tax and parking tax rates, and increased its Use and Occupancy Tax rate to produce an additional \$10 million (totaling \$1,218.5 million, **up 46% from FY2011**). These efforts have led to a dramatic increase in local funding since fiscal year 2011:



These tax increases are being made by a city that already imposes one of the nation’s highest tax burdens. An independent study determined that Philadelphia’s residential tax burden is the second highest in the nation, and the highest for a hypothetical family with an annual income of \$25,000.³⁴ Further, while a recent study determined that the tax disadvantage of Philadelphia relative to the surrounding suburbs shrank

³⁴ GOVERNMENT OF THE DISTRICT OF COLUMBIA, TAX RATES AND TAX BURDENS IN THE DISTRICT OF COLUMBIA –A NATIONWIDE COMPARISON (Dec. 2015), available at <http://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/2013%2051City%20Study%20FINAL.pdf> (last visited Jan. 28, 2016).

between 2000 and 2012, Philadelphia tax rates were still more than twice as high as the surrounding suburbs *after* that decrease.³⁵

ARGUMENT

The Pennsylvania Constitution 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.” Article III, § 14 (“Education Clause”). While this Court affirmed the Commonwealth Court’s determination that claims that inadequate State education funding violate that provision present a nonjusticiable “political question,” *Marrero v. Commonwealth*, 739 A.2d 110 (Pa. 1999), *affirming*, 709 A.2d 956 (Pa. Commw. 1998), a careful reading of both courts’ decisions (the Supreme Court quoted the lower court at length) shows that the Court stayed its hand, not because it believed there could be no judicial review,

³⁵ THE PEW CHARITABLE TRUSTS, A NARROWING GAP BETWEEN PHILADELPHIA AND ITS SUBURBS (Sept. 19, 2012), *available at* http://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/philadelphia_research_initiative/philadelphiasuburbstaxes.pdf (last visited Feb. 12, 2016).

but because it believed appellants' allegations were not sufficiently egregious.

Both the text and the history of the Education Clause support the conclusion that the provision requires some level of State funding. The most obvious interpretation of the mandate to provide "maintenance and support" is that the General Assembly is required to provide, at an absolute minimum, *some* level of State financing for public education. Prior to 1968 amendments, and dating back to 1874, the Education Clause required the General Assembly to appropriate a minimum of a million dollars to fund education. (Profs.' Amicus Br. at 8-9). That requirement was eliminated in 1968 only because that amount was trivial in comparison to the level of presumed State funding. *See (id.* at 13 n. 12). If the General Assembly failed to provide *any* State funding, forcing each local school district to rely entirely on local taxation, a challenge to that policy would be a justiciable violation of the Education Clause.

This Court's decision in *Marrero* is consistent with that conclusion. Before determining that appellants could get no judicial relief, the Commonwealth Court in *Marrero* took pains to note explicitly:

The purpose of [the Education Clause] and its predecessor provision, was to shift some of the control of the operation of the public school system in this Commonwealth from the various localities to the General Assembly. *To defray a portion of the expenses incurred under this system, some funds are appropriated from the General Assembly for the operation of the schools. . . . [T]he General Assembly was charged with the responsibility to set up a “thorough and efficient system of public education” in the Commonwealth. The General Assembly has satisfied this constitutional mandate by enacting a number of statutes relating to the operation and funding of the public school system in both the Commonwealth and, in particular, in the City of Philadelphia.*

709 A.2d at 965 (citation omitted, emphasis added). The *Marrero* court then specifically found that the General Assembly had taken steps to operate and fund the public schools—including the Philadelphia schools—that satisfied the Education Clause. Both *Marrero* decisions quoted from a decision dismissing an earlier Philadelphia school funding claim:

As long as the legislative scheme for financing public education “has a reasonable relation” to “(providing) for the maintenance and support of a thorough and efficient system of public schools,” the General Assembly has fulfilled its constitutional duty to the public school students of Philadelphia. *The Legislature has enacted a financing scheme reasonably related to maintenance and support of a system of public education in the Commonwealth of Pennsylvania. The framework is neutral with regard to the School District of Philadelphia and provides it with its fair share of state subsidy funds.*

Danson v. Casey, 399 A.2d 360, 367 (Pa. 1979) (citation omitted, emphasis added). What *Marrero* actually stands for is the courts' reluctance to micromanage education funding when the General Assembly's efforts were arguably adequate.

As the City has shown, the General Assembly's current school funding scheme does not have a "reasonable relation" to providing for "the maintenance and support of a thorough and efficient system of public education" for Philadelphia's children. Philadelphia receives barely \$1,300 more per student than the average district in Pennsylvania—a level of funding that does not begin to cover the additional challenges faced by Philadelphia's students and that ignores the inadequacy of the local tax base and the extraordinary efforts Philadelphia nonetheless has made to compensate for the Commonwealth's failings. As a result, Philadelphia's children do not receive the benefit of "a thorough and efficient system of public education" and their inequitable treatment violates the principles of equal protection. Accordingly, the General Assembly has not satisfied its obligations under the Pennsylvania Constitution.

The City does not suggest that this Court should mandate any particular education program or any set formula for the Commonwealth's school funding; the Constitution clearly assigns those functions to the General Assembly. The City does argue that this Court should intervene when the program and funding that the General Assembly has designed are not "reasonably related to maintenance and support of a system of public education" and when disadvantaged students are receiving such inadequate resources that the disparity violates equal protection.

This Court would not dismiss this suit as non-justiciable if there were no public schools in Philadelphia or if the General Assembly provided *no* State funding for K-12 education. The City respectfully submits that the extreme underfunding that the school districts allege here is only a step from the latter.

CONCLUSION

Only this Court's intervention can provide Philadelphia's children with the education that they deserve. Circumstances have now made clear that this Court can no longer stay its hand; this case should be returned to the Commonwealth Court for additional proceedings.

Respectfully submitted,

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ACTING CITY SOLICITOR

RICHARD G. FEDER,
CHIEF DEPUTY CITY SOLICITOR

/s/ Frances Ruml Beckley

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Dated: February 16, 2016

CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2016, I electronically filed this brief with the Clerk of Court for the Supreme Court of Pennsylvania by using the PACFile electronic filing system. Notice was provided to the following via PACFile:

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Exhibit A

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

WILLIAM PENN SCHOOL DISTRICT, *et al.*,

v.

PENNSYLVANIA DEPARTMENT
OF EDUCATION, *et al.*

No. 46 MAP 2015

UNSWORN AFFIDAVIT OF OTIS HACKNEY

I, Otis Hackney, state that:

1. This year, Mayor Kenney appointed me Philadelphia's Chief Education Officer. I have been an educator for 18 years and worked for the Philadelphia School District for 15 years, most recently as principal of South Philadelphia High School from July 2010 until December 2015.

2. I took that position after serving as the principal of Springfield Township High School in Montgomery County for three years. The transition meant moving between two different worlds – at Springfield there was swimming and a water polo team; at South Philadelphia there were no funds for music or art.


3. Even so, in my first years at South Philadelphia, we increased the percentage of students testing as proficient in both reading and math. But those improvements stopped when the most recent funding crisis hit South Philadelphia. Twenty of our ninety teachers were laid off, and the nearby Bok High School closed, forcing South Philadelphia to suddenly absorb its students.

4. Losing these teachers meant overcrowded classes and the end to elective and advanced placement courses. It meant damage to the morale of our faculty and our students, as teachers with even seven or eight years of experience were laid off. And it meant straining our staff almost to the breaking point.

5. When funding was reduced, I went from having three assistant principals to having only one for a student body of about eight hundred students. Where Springfield High School, with a comparable student body, had five secretaries, South Philadelphia was reduced to one. And South Philadelphia – a five-story building that takes up a city block – was reduced from three custodial workers to only one.

6. The impact of inadequate facilities and maintenance on staff and students was substantial. I sometimes found myself, as principal, guarding spilled milk to prevent further accidents, until custodial staff could mop it up. Girls avoided the restrooms because many stalls lacked doors. Toilet paper was in short supply, which resulted in students taking and hoarding it, which further aggravated the shortage.

7. I hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



Otis Hackney, Chief Education Officer

Dated: February 5, 2016