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1500 John F. Kennedy Blvd., Suite 802
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**Testimony Michael Churchill
Of Counsel, Public Interest Law Center
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It has been my honor to be part of the team of lawyers to represent the six school districts, two organizations, and families that brought Pennsylvania's school funding litigation which resulted in Judge Cohen Jubelier's decision of February 7th this year.¹ As you know, none of the parties appealed that decision, so the facts she found and conclusions of law she reached in her 786 page opinion are no longer open for debate.

In my testimony I offer you some guidance on what the Court decided, including some familiar school funding myths it considered and rejected, along with some observations on how this impacts the work before you.

I also am attaching to my testimony a selection of topics that the Court covered in its decision. Those are not intended to be complete, but to assist members of the General Assembly in discerning what the Court held, and why.

I. What the Court ruled and why

A. Every child can learn

Much of the Court's opinion in this case rested upon a foundational understanding: "**every child can learn**, regardless of individual circumstances, with the right resources."² Once you accept this basic tenet, which was true in 1874 when the guarantee of a thorough and efficient public education was added to the Constitution, and which as "[a]ll witnesses agree[d]" at trial, is true today,³ everything that follows is clear.

But it is also important to understand that the Court's opinion also rests on its finding, based on this legislature's own endorsement multiple times, that students with

¹ The Petitioners in the case were William Penn School District, Panther Valley School District, Shenandoah Valley School District, Greater Johnstown School District, Wilkes Barre Area School District, and the School District of Lancaster. They were joined by the NAACP-Pennsylvania State Conference, the Pennsylvania Association of Rural and Small Schools, and families.

² *William Penn Sch. Dist. v. Pennsylvania Dep't of Educ.*, 587 M.D. 2014 (Feb. 7, 2023), Slip. Opinion ("Op.") at 717-18.

³ Op. at 778.

different needs such as living in poverty, having a disability, being an English Language Learner, have differing needs for resources and have differing costs for districts.

B. Every child must be provided a meaningful and effective opportunity to learn

The Court found that the Education Clause intends all students to be given an effective and meaningful opportunity to succeed in public schools—no matter where they live, no matter the wealth of their community, and no matter their family’s individual economic, racial, or social status. Some persons may disagree on the role of courts in enforcing this constitutional mandate, but I doubt that any in this room would assert that we should defend or allow to continue a system where some schools do not have the resources that are necessary for their students to have that meaningful and effective opportunity to become prepared citizens and productive members of our communities.

C. Children are being deprived of the resources you have deemed “essential”

The bulk of the Court’s opinion is devoted to examining whether districts do have the resources needed. To do that the court looked both at inputs—the resources available to districts—and the outcomes, how students are doing—to see if the system was providing all students the opportunity for an effective education to prepare them to succeed.

The inputs it looked at were the “courses, curricula and programs, staffing, facilities, and instrumentalities of learning” that the Court held to be the components of an effective, contemporary system.⁴ The opinion is replete with numerous example of deprivations of the very resources Pennsylvania has “identified as essential to student achievement, some of which are as basic as safe and temperate facilities in which children can learn.”⁵ Educators, the Court found, were “being forced to choose which few students would benefit from the limited resources they could afford to provide, despite knowing more students needed those same resources.”⁶

Educators were not asking the Court to bestow upon them money for something untested or grandiose. Rather, they were seeking sufficient resources to use tried and true methods recommended by the state itself to teach their children to read, to become skilled at math, and to ready themselves for college or a family-sustaining career as engaged, able citizens. And they were asking for help providing safe and adequate facilities.

⁴ Op. at 774.

⁵ *Id.*

⁶ *Id.*

I leave it to the Superintendents sharing this panel with me to more fully describe the conditions they and their staffs face while trying to prepare their students for their future lives.

D. Students in Underfunded Schools Have Poorer Outcomes

The Court also documented how students in underfunded schools have poorer outcomes, concluding that “[t]he effect of this lack of resources shows in the evidence of outcomes,” including unacceptable results on state assessments, AP exams, and SATs; low high school graduation rates and post-secondary enrollment and attainment rates.⁷

These differing outcomes are not a result of the differing characteristics of the students. Critically, the Court found that students who grew up in poverty but attended well funded schools do much better on state exams, on graduation rates, on going to college and completing college than student who similarly grew up in poverty but attended poorly funded schools. This required no fancy study, it was right there in the data.

Ultimately, despite knowing that all children can learn, our system has failed to sufficiently prepare many of them for success in life. The Court explained why: Because the funding system has created “manifest deficiencies” in the resources all agreed were essential.

E. The system’s failures are particularly placed upon the shoulders of low-income children and children of color

These failures are not felt evenly. Low income students and students of color are concentrated in the low wealth underfunded schools. As Pennsylvania Department of Education witnesses readily admitted at trial, the Commonwealth has some of the largest achievement gaps in the nation, for low-income students, Black students, and Latino students. By way of example, for years, less than twenty percent of Black children have been proficient in math. Just twenty percent of Black, Latino, or low-income graduates of Pennsylvania public schools will go on to get a two- or four-year post-secondary degree. In fact, these gaps are so big that PDE could not even set uniform goals for all student subgroups in its ESSA plan. That means that “even were Pennsylvania to achieve all of its goals by 2030 — which the Department admits will not happen without additional funding — significant achievement gaps will remain throughout the system.”⁸

PDE was clear in its testimony at trial that the decision to set different goals for different groups of students “was not because of any belief about the innate ability of certain students, but rather a recognition of the depth of existing inequities within

⁷ *Id.*

⁸ Op. at 578.

Pennsylvania’s school funding system itself.”⁹ As the former Deputy Secretary of Education testified: “The very starting point is a reflection of the historic inequities in our system that have created the conditions.”¹⁰

F. The Funding System Does Not Provide Enough Resources and Provides them Unequally to Low Wealth Districts, in Violation of the Constitution

Because all children can learn, but many are being deprived of resources and of the most important opportunities of their lives, the Court reached the only logical conclusion: the funding system violates the requirement to adequately provide the funding needed for all students to have a meaningful opportunity to an effective contemporary education, and because the inadequacies are concentrated in the low wealth districts it also violates the equal protection clause of the Constitution.¹¹

G. The failures are caused by a system that is heavily reliant on local wealth and which fails to determine what schools need to adequately meet their students’ needs

The Court identified as the causes of the failure a “system that is heavily dependent on local tax revenue, which benefits students in high-wealth districts,”¹² and a funding method that “does not adequately take into account student needs, which are generally higher in low-wealth districts”¹³ As the Court noted in one of the findings cited in support of that conclusion, the current fair funding formula “never dealt with what was adequate for our students to meet the needs they have.”¹⁴

In other words, it is a system where opportunity is too often defined by the fortune of your neighbors. Low-wealth districts aren’t underfunded in Pennsylvania because their communities don’t try hard to support their schools. In fact, as a group, they try the hardest. Low-wealth districts are underfunded because their communities are low-wealth. And that, the Court ruled, violates our charter of government.

H. The solution cannot be found in hot-button Pennsylvania issues of the past

In its decision, the Court either directly or indirectly addressed virtually every common dispute raised in Pennsylvania school funding debates. The Court’s decision:

- Held that the Constitution requires a contemporary, comprehensive, effective *public* education for every child;

⁹ *Id.*

¹⁰ *Id.*

¹¹ Op. at 676, 773-775.

¹² Op. at 769.

¹³ *Id.*

¹⁴ Op. at 383, ¶ 1702

- Found that charter schools perform no better in the current funding system than district schools;
- Found that national comparisons of Pennsylvania school spending are often inaccurate;
- Found that federal COVID aid was important, but could not solve our long-term problem; and,
- Found that district fund balances were needed and not the cause of inadequacy.
- Found that fixing current inequities arising from hold harmless components of current state funding formulas would be insufficient and like “rearranging the deck chairs on the Titanic.”

II. What Must Be Done: Bring the Education Funding System into Compliance with the Constitution

The first duty of all members of the General Assembly must be to bring the system of funding *public* schools into compliance with their Constitutional duty to maintain and support a “thorough and efficient system of *public* education.” Before creating new or alternative systems of education, you must fix the current system which is serving almost 1.7 million students in the state.

The General Assembly has many of the building blocks already in place. It has already created formulas for Basic Education and Special Education which adjust funding based on the needs of students. What it now needs to do is determine how much it will cost to provide meaningful access for all these students to the effective education already available in some of our schools. Then it will know how much more funding is needed to close the gap to a constitutional system in funding those two areas. Next it must determine the state share of that BEF and Special Education shortfall in light of the feasible local fund raising capacity. And then it must also determine how much is needed to provide safe and appropriate facilities and access to pre-school for all eligible students, because those are two other essential elements for a meaningful access to an effective education.

1. Create serious adequacy targets for what schools need in order to provide their students a comprehensive, effective, contemporary education

The legislature’s foundational task is to calculate how much funding each school district needs to provide all children a comprehensive, effective, and contemporary education, no matter their needs and no matter where they live, such that students can succeed in life and meet state goals. As Leader Cutler’s expert witness in this matter has explained: “[t]o design a funding system that effectively supports the state’s education goals, states should first establish clear, measurable targets for student

achievement and then determine and provide the necessary education funding to achieve these goals.”¹⁵

Petitioners’ expert Dr. Kelly has presented a model that makes sense, based on all the elements the legislature has already adopted in the Fair Funding Formula and Special Education Funding Formula. First he looked at what 75 successful districts are already spending in relationship to their needs. He then was able to calculate what each district would need to spend at the same rate in relationship to their needs. That showed a gap of \$6.258 billion or an increase of about 20% over current spending. That amount addresses the expenses the successful schools spent on Basic Education, CTE, Special Ed, transportation, charter schools and pensions and would cover the shortfall gap for all funding except facilities and pre-k.

2. Determine a fair and equitable “state share” for those targets, so that all school districts can reach adequate funding at a reasonable tax effort

The legislature must also identify a feasible, equitable approach for determining a state share that enables school districts to meet their adequacy targets. As the Court explained, low-wealth school districts in Pennsylvania cannot tax their way to sufficient funding, and generally have the highest tax rates in the Commonwealth. Ultimately, establishing a thorough and efficient system of education is the Commonwealth’s responsibility, and even “recitations of the need for local control cannot relieve the General Assembly of its exclusive obligation under the Education Clause.”¹⁶

The state share of the BEF and SPED Adequacy Shortfall for each district would then be divided by the number of years it is to be met and then each year appropriated pro-rata to the share of the state target in the same manner as Level Up funding currently is. All current state line items would continue or be revised as the legislature determines.

3. Address funding for pre-Kindergarten and facilities, among other things

The Court’s opinion made plain the Constitution requires adequate funding for all aspects of public education, from pre-Kindergarten programs to appropriate facilities.

Money is fungible. When the Commonwealth fails to adequately fund one component of the system, school districts often respond by diverting funds from another. At trial, the then-Chief Financial Officer of the School District of Philadelphia, now the Commonwealth’s Budget Secretary, explained how this trade-off works in practice:

¹⁵ Op. at 538, FOF ¶ 2153.

¹⁶ Op. at 770.

If I don't do that roof, it means I can afford to keep teachers in the school or certain resources or purchase more computers or whatever the — it — you're constantly making choices and trying to get one more year out of that roof, trying to get one more year out of whatever. Eventually that deferred maintenance its going to catch up to you, especially across a broad array of systems.¹⁷

It is critical to consider how Pennsylvania ensures all aspects of this system are adequately funded. Dr. Kelly has provided a method for calculating adequacy for basic education and special education that folds in a number of other critical line items, from CTE funding, to transportation funding, to charter school reimbursements. And he calculated the cost of fully funding Pre-K Counts across the Commonwealth.

4. Meet the urgency of the problem

We did not create the deficiencies that plague our system in a year, and we will not dig ourselves out of them in a year, either. The task of bringing our public education system into compliance requires all of us to articulate a clear vision for the future, and an action plan to rebuild school buildings and teacher pipelines, alike. But it also requires an urgent solution now. A child is in Kindergarten once, and once only. In fact, if she was starting Kindergarten in one of our districts when this lawsuit was filed, she would be entering high school this month, having spent her entire childhood in underfunded schools. We cannot let another generation of children pass by before getting this right.

III. The primacy of education means that sufficiently funding schools is a mandate, not a choice

The undertaking ahead of you is no small order, and it will require a significant investment of resources. Dr. Kelly's estimate, for example, requires approximately a 20% increase in current expenditures statewide. But education's central place in the Constitution means that no matter the difficulty, your duty remains.

The Supreme Court explained this once before, when it ruled for Petitioners in 2017 and sent the case back to Commonwealth Court to hold a trial. The Court acknowledged then that you all have a tough job, remarking that there are surely "many competing and not infrequently incompatible demands [you] face to satisfy non-constitutional needs, appease dissatisfied constituents, and balance a limited budget in a way that will placate a majority of members in both chambers despite innumerable differences regarding policy and priority."¹⁸ But the Supreme Court was clear that the constitutional mandate to provide a thorough and efficient system of public education was non-negotiable, and that the courts would "monitor the General Assembly's efforts

¹⁷ Op. at 361.

¹⁸ *William Penn Sch. Dist. v. Pennsylvania Dep't of Educ.*, 170 A.3d 414, 464 (Pa. 2017).

in service of its mandate and . . . measure those effects against the constitutional imperative, ensuring that non-constitutional considerations never prevail over that mandate.”¹⁹

These efforts were measured at trial, and found to be insufficient: the Commonwealth Court ruled that you all “have not fulfilled [your] obligations to all children under the Education Clause,” and that “[s]tudents who reside in school districts with low property values and incomes are deprived of the same opportunities and resources as students who reside in school districts with high property values and incomes.”²⁰

IV. The Opportunity Before You

The Court’s judgment is also an opportunity for you all to claim the mantle of history. The forefather of Pennsylvania’s modern educational system was one of our most cherished citizens: Thaddeus Stevens. In 1834, while defending the earliest form of our statewide system from an attempted repeal by the Pennsylvania House, Stevens implored his colleagues to take “lofty ground, look beyond the narrow space which now circumscribes our vision, beyond the passing, fleeting point of time on which we stand and . . . cast our votes” so that the “blessing of education shall be conferred on every son of Pennsylvania: carried home to the poorest child of the poorest inhabitant of the meanest hut of your mountains, so that even he may be prepared to act well his part in this land of freedom.”²¹

What this moment calls for is plain: to fix what has been broken too long, to make the blessing of education work for every citizen. The reward for that effort is not simply compliance, but rather a stronger economy, stronger families, stronger communities, and a stronger Commonwealth.

¹⁹ *Id.*

²⁰ *William Penn Sch. Dist. v. Pennsylvania Dep’t of Educ.*, 587 M.D. 2014 (Feb. 7, 2023), Order at 2.

²¹ *The Famous Speech of Hon. Thaddeus Stevens of Pennsylvania in Opposition to the Repeal of the Common School Law of 1834, in the House of Representatives of Pennsylvania, April 11, 1835*, 12.