

UNIVERSITY OF PITTSBURGH LAW REVIEW

Vol. 84 • Summer 2023

FROM PAST TO PRESENT: FUNDING THE
PENNSYLVANIA PUBLIC EDUCATION SYSTEM

Kristen R. Wagner

ISSN 0041-9915 (print) 1942-8405 (online) • DOI 10.5195/lawreview.2023.961
<http://lawreview.law.pitt.edu>



This work is licensed under a Creative Commons Attribution-Noncommercial-No Derivative Works 3.0 United States License.

Pitt | Open
Library
Publishing

This journal is published by [Pitt Open Library Publishing](http://pittopenlibrarypublishing.com).

FROM PAST TO PRESENT: FUNDING THE PENNSYLVANIA PUBLIC EDUCATION SYSTEM

Kristen R. Wagner*

INTRODUCTION

In 1874, the Pennsylvania Constitution was amended to contain a promise to fund public education.¹ Specifically, the Education Clause provided “for the maintenance and support of a *thorough and efficient* system of public schools”² Recently, this promise was the subject of a lawsuit challenging Pennsylvania’s current public school funding system as unfair, inadequate, and unconstitutional.³ In *William Penn School District v. Pennsylvania Department of Education*, petitioners pointed to differences between per pupil funding in surrounding school districts caused by wealth-based disparities⁴—offering evidence to demonstrate that local tax revenues disadvantage districts with lower property values.⁵

* J.D., 2023, University of Pittsburgh School of Law; B.S., 2020, Purdue University. Most importantly, a 2016 graduate of Eisenhower High School, a public high school located in Russell, Pennsylvania. Thank you to the *University of Pittsburgh Law Review* staff for all their hard work. Thank you to my parents—I would not be where I am without you both.

¹ Jules Lobel, *The Pa. Constitution Supports a Fair Education for All—Rich and Poor Alike*, PA. CAPITAL-STAR (Jan. 23, 2022, 6:30 AM), <https://www.penncapital-star.com/commentary/the-pa-constitution-supports-a-fair-education-for-all-rich-and-poor-alike-opinion/>.

² PA. CONST. art. X, § 1 (1874) (emphasis added).

³ Maddie Hanna & Kristen A. Graham, ‘A Systemic, Widespread Failure’: Pa. School Funding is *Depriving Students, Plaintiffs Argue at Start of Historic Trial*, PHILA. INQUIRER (Nov. 12, 2021, 5:26 PM), <https://www.inquirer.com/news/pa-school-funding-trial-opening-arguments-20211112.html>.

⁴ *William Penn Sch. Dist. v. Pa. Dep’t of Educ.*, 170 A.3d 414, 428–29 (Pa. 2017).

⁵ *Id.* at 429. Petitioners compare Shenandoah Valley School District (“SVSD”) against Tredyffrin/Easttown School District (“TESD”). *Id.* On one hand, Petitioners point out that although SVSD uses a higher property tax for its residents, the tax collation results in around \$4,000 per student; on the other hand, TESD uses a rate *half that of SVSD* and yet collects around \$19,500 per student. *Id.* (emphasis added).

In 2016, Pennsylvania attempted to address funding discrepancies by implementing the Pennsylvania Fair Funding Formula.⁶ However, this formula only accounts for 11% of the mere 38% of the state's total revenue that is allocated to public school funding.⁷ Following this small change to the funding system, and decades of ruling that challenge the state's public education funding system as a nonjusticiable political question, the Pennsylvania Supreme Court overturned its precedent and allowed William Penn School District to go to trial.⁸ Almost a year after trial, the Commonwealth Court of Pennsylvania declared education a fundamental right under the Pennsylvania Constitution and ruled that the Commonwealth's current public school funding system is unconstitutional.⁹ Even with stronger ground for support, the question remains as to how the legislature will remedy the inequities in the funding system.

This Note analyzes the current legal landscape of funding public education in Pennsylvania and the United States, in general, and offers a solution for equitable funding in the Commonwealth. Part I provides background on how Pennsylvania funds its public school system. Part II outlines education litigation in the United States and then focuses on the three main Pennsylvania education funding cases. Part III walks through the *William Penn School District* litigation from start to finish. Finally, Part IV offers potential intermediate solutions until a more equitable and permanent solution is found.

I. THE PENNSYLVANIA EDUCATION FUNDING SYSTEM

Pennsylvania public schools are funded by three sources: the federal government, the Commonwealth, and the school districts themselves.¹⁰ The federal government's contributions make up an estimated 5% of the Pennsylvania public schools budget, while the state contributes 38.6%, and the local school districts make up the remaining 56.4%.¹¹ Pennsylvania's monetary contribution toward public

⁶ See *infra* Part I.B.

⁷ *Id.*

⁸ See *infra* Part III.B.

⁹ See *infra* Part III.C.

¹⁰ NAT'L EDUC. ASS'N, RANKINGS OF THE STATES 2020 AND ESTIMATES OF SCHOOL STATISTICS 2021, tbl. F-4 (2021), https://www.nea.org/sites/default/files/2021-04/2021%20Rankings_and_Estimates_Report.pdf.

¹¹ *Id.* The federal government funds public education through the Elementary and Secondary Education Act ("ESEA"), the No Child Left Behind Act ("NCLB"), and the Individuals with Disabilities Education Act ("IDEA"). M. Akram Faizer, *Revitalizing American Democracy Through Education Reform*, 52 U.

education ranks in the bottom 12% nationally.¹² Yet Pennsylvania spends approximately \$21,000 per student, which ranks in the top 20% in spending per student when compared to the spending of other states.¹³ This disparity in Pennsylvania's contribution and spending per student is often credited to the Commonwealth's decades old-funding system.¹⁴

A. *A Historical Perspective of Pennsylvania Public School Funding*

In 1874, the Pennsylvania Constitution was amended to include a clause dedicated to public education: "The General Assembly *shall* provide for the maintenance and support of a *thorough and efficient* system of public schools. . . ."¹⁵ The original sum of money designated to support public schools was \$1,000,000.¹⁶ However, the motioning assembly member clarified that the \$1,000,000 amount was subject to change:

But I am glad to say that the wants of the community have been met by the Legislature from time to time, as the system has grown and the ability of the people have increased, and if this sum should be considered insufficient in the future, I have no doubt that the Legislature will be found equal to the occasion, and meet any increased demand upon the educational system of the State.¹⁷

This imposition of a sum of money dedicated to funding schools proved divisive. While those in favor of the amendment argued that this provision prevented

MEM. L. REV. 95, 130–32 (2021). This Note will not focus on the federal government's contribution to Pennsylvania education funds.

¹² NAT'L EDUC. ASS'N, *supra* note 10, at tbl. C–4. Pennsylvania ranked forty-fourth in state revenue as a percentage of total revenue; only six states rank worse than Pennsylvania: Florida, Nebraska, Nevada, South Dakota, New Hampshire, and Missouri. *Id.*

¹³ *Id.* at tbl. C–2. In the 2018–2019 year, Pennsylvania ranked tenth in spending per student; in the 2019–2020 year, Pennsylvania ranked ninth. *Id.*

¹⁴ Hanna & Graham, *supra* note 3.

¹⁵ PA. CONST. art. X, § 1 (1874) (emphasis added).

¹⁶ *Id.*; see also DEBATES OF THE CONVENTION TO AMEND THE CONSTITUTION OF PENNSYLVANIA 420 (Harrisburg, B. Singerly, 1873).

¹⁷ *Id.*

significant differences in millage rates,¹⁸ opponents claimed that this provision intruded on local districts' ability to "tailor education to local resources and needs."¹⁹ Although the \$1,000,000 amount was eventually approved, this initial argument between assembly members foreshadowed the disputes over education funding that continue to this day.²⁰

1. The Hold Harmless Approach

In 1992, the Pennsylvania General Assembly made a change to the decades old funding system by implementing the Hold Harmless approach.²¹ The Hold Harmless approach froze the 1991–92 provisions of the prior education subsidy and supplemental funding.²² As a result, each school district received the same distribution from the prior year plus a predetermined amount of new state education funds.²³ One year later, the General Assembly added a supplement to the prior year's distribution amount, including payments based on poverty, enrollment growth, tax efforts, English proficiency, and district aid ratio.²⁴ Every subsequent year, the supplements from the prior year were built into the Hold Harmless calculation.²⁵ This meant that districts with decreasing enrollment experienced per-student funding

¹⁸ *William Penn Sch. Dist. v. Pa. Dep't of Educ.*, 170 A.3d 414, 424 (Pa. 2017). A millage is an antiquated tax levied on property; a mill equals one ten thousandth of a dollar, and a millage rate is the number of mills that a school district will levy on every \$1,000 in assessed property value. Connie Langland, *What is a Millage Rate and How Does It Affect School Funding?*, WHYY (May 27, 2015), <https://whyy.org/articles/what-is-a-millage-rate-and-how-does-it-affect-school-funding/>.

¹⁹ *William Penn Sch. Dist.*, 170 A.3d at 425.

²⁰ See *infra* Part II.B.

²¹ BASIC EDUC. FUNDING COMM'N, REPORT AND RECOMMENDATIONS 20 (2015). Hold harmless policies limit revenue declines from year to year for school districts that would otherwise lose funding because of enrollment declines or changes in tax revenue. ERIC SYVERSON & CHRIS DUNCOMBE, EDUC. COMM'N FOR THE STATES, STUDENT COUNTS IN K-12 FUNDING MODELS 7 (2022), <https://files.eric.ed.gov/fulltext/ED617186.pdf>.

²² *Id.* The prior education subsidy is the Equalized Subsidy for Basic Education ("ESBE"). BASIC EDUC. FUNDING COMM'N, *supra* note 21, at 19–20. Under ESBE school districts basic education subsidies were determined by a new Factor for Educational Expenses formula, the formula factored in poverty, the local tax effort and population per square mile, and held districts harmless with a guaranteed 2% increase in funding each year. *Id.*

²³ HOUSE APPROPRIATIONS COMM., PA'S FAIR FUNDING FORMULA—BASIC EDUCATION: BUDGET BRIEFING 4 (Comm. Print 2020), https://www.houseappropriations.com/files/Documents/BEF_Primer_102820.pdf.

²⁴ BASIC EDUC. FUNDING COMM'N, *supra* note 21, at 20–21.

²⁵ *Id.* at 21.

increases, while the districts with increasing enrollment experienced per-student funding decreases.²⁶ Thus, a major issue emerged in that inequity from the prior years was built into the following year's funding.²⁷

This system remained until 2008, when the state adopted a new funding formula to offset the fallouts of the recession.²⁸ This new weighted student formula integrated a multitude of factors, including poverty, geographic cost differentials, English proficiency, special needs costs, and local tax efforts.²⁹ Additionally, the formula set a target amount that school districts should aim to spend and how much money the state should supplement to each school district.³⁰ Ultimately, this formula structure was abandoned in 2011 for a basic funding formula comprised of a set amount of funding for each district plus an additional funding amount calculated by the number of English language learners, the number of free and reduced lunch students, and the changes to a district's adjusted average daily student population.³¹

In 2013, Pennsylvania reverted back to the Hold Harmless approach.³² This time, however, the Commonwealth paid the school districts an amount equal to what it received the prior year *plus* a supplement, which was calculated by multiplying a predetermined base amount by the school district's average daily membership and the district's market value/aid ratio.³³

²⁶ Kevin McCorry, *Everything You Wanted to Know About Pennsylvania's New Education Formula*, WHYY (June 9, 2016), <https://whyy.org/articles/everything-you-wanted-to-know-about-pennsylvanias-new-education-formula/#:~:text=The%20sparsity%20ratio%20is%20based,counts%20for%20the%20remaining%2060%25>.

²⁷ *See id.*

²⁸ *See* BASIC EDUC. FUNDING COMM'N, *supra* note 21, at 22.

²⁹ *Id.*

³⁰ Cynthia Fernandez & Maddie Hanna, *Pa. Schools Need an Additional \$4.6 Billion to Close Education Gaps, New Analysis Finds*, SPOTLIGHT PA. (Oct. 27, 2020), <https://www.spotlightpa.org/news/2020/10/pa-public-school-funding-analysis-philadelphia-reading-lancaster/>.

³¹ BASIC EDUC. FUNDING COMM'N, *supra* note 21, at 22.

³² *Id.*

³³ *See id.* at 22–23. The Average Daily Membership is the annual average of a district's enrolled students. PA. SCH. BD. ASS'N, *THE NEED FOR A NEW BASIC EDUCATION FUNDING FORMULA 7* (2015), https://www.psba.org/wp-content/uploads/2015/06/BEF_PSBA-white-paper.pdf. The district aid ratio is a measure of the relative wealth of a district that is based on real property values and personal income per student. *Id.* at 6.

However, the following years revealed numerous problems and criticisms with the funding formula, so the Basic Education Funding Commission (“Commission”) was established to review the basic education funding formula to make findings and to give recommendations for the existing system.³⁴

B. The Current System: The Pennsylvania Fair Funding Formula

On June 1, 2016, former Pennsylvania Governor Tom Wolf approved a student-weighted basic education funding distribution formula, commonly known as the Pennsylvania Fair Funding Formula (“Fair Funding Formula”).³⁵ The Fair Funding Formula begins with the number of students in each school district.³⁶ The number of students is based on the average daily membership of students in that district over the prior three school years.³⁷ After the number of students is determined, two categories of weighted factors are applied: student-based factors and school district-based factors.³⁸ The student-based factors account for student challenges, such as poverty levels and English language learners.³⁹ The poverty level factor is based on three measures: (1) students living in poverty under the federal poverty line guidelines, (2) students living in acute poverty, and (3) students living in concentrated poverty.⁴⁰ The English language learner factor is based on the number of students not meeting English proficiency standards.⁴¹

³⁴ See 24 PA. CONS. STAT. § 1-123 (2020).

³⁵ Eryn Spanger, *Basic Education Fair Funding Formula Signed into Law*, GOVERNOR TOM WOLF (June 7, 2016), <https://www.governor.pa.gov/newsroom/basic-edu-fair-fund-formula-signed/>.

³⁶ *Pennsylvania’s New Fair Funding Formula*, CHILDREN FIRST, <https://www.childrenfirstpa.org/wp-content/uploads/2014/08/PA-Ed-Funding-Formula-Fact-Sheet-5.pdf> (last visited Sept. 7, 2023).

³⁷ *Id.*

³⁸ BASIC EDUC. FUNDING COMM’N, *supra* note 21, at 66.

³⁹ *Id.*

⁴⁰ *Id.* The levels and respective weights of poverty are broken down as follows: (1) students living in poverty at 100–184% of the federal poverty level are given additional weight of 0.3, (2) students living in acute poverty at 0–99% of the federal poverty level are given additional weight of 0.6, and (3) students living in concentrated poverty in those districts with 30% or more living in acute poverty are given a weight of 0.9. 24 PA. CONS. STAT. § 25-2502.53(c)(1) (2022).

⁴¹ BASIC EDUC. FUNDING COMM’N, *supra* note 21, at 30.

The school district-based factors reflect student and community differences throughout Pennsylvania school districts.⁴² These factors include sparsity-sized adjustments, median household income index, and local effort capacity index.⁴³ The sparsity-sized adjustment is meant to account for school districts located in rural areas that experience high poverty levels, low property values and personal income, and decreasing enrollment.⁴⁴ The sparsity ratio of the adjustment is based on a district's number of students per square mile, whereas the size ratio of the adjustment is based on the district's number of students divided by the average number of students in the entire state's school districts.⁴⁵ The median household income index measures the median local household income compared to the statewide median household income.⁴⁶

The local effort capacity index calculates a school district's ability to generate local tax-related revenue.⁴⁷ This index is based on local effort and local capacity.⁴⁸ Local effort compares the amount a district taxes to the statewide median and then makes a downward adjustment for those districts that spend more than the statewide median.⁴⁹ Local capacity calculates the amount a school district could spend per student if that district taxed at the statewide median.⁵⁰ After all the factors are considered, the Fair Funding Formula is calculated by taking the sum of the weighted student headcount (adjusted for the student-based factors) and the sparsity-size adjustments and multiplying this total by the median household income index and the local effort capacity index. Each school district then receives a pro rata share of the funding allocation.⁵¹

⁴² *Id.* at 63.

⁴³ *Id.* at 66.

⁴⁴ *Id.* at 33.

⁴⁵ McCorry, *supra* note 26.

⁴⁶ CHILDREN FIRST, *supra* note 36.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ McCorry, *supra* note 26.

⁵⁰ *Id.*

⁵¹ BASIC EDUC. FUNDING COMM'N, *supra* note 21, at 66.

When the state adopted the Fair Funding Formula, it also reformed the Hold Harmless approach.⁵² The Commission replaced the standard hold harmless calculation with a set base year amount (for example, each district's allocation begins with what it received in 2016–17).⁵³ However, by setting a base year for the school districts, the Fair Funding Formula does not apply to the entire education funding distribution.⁵⁴ Instead, the Fair Funding Formula amount *supplements* the base year amount.⁵⁵ Thus, in the 2018–19 fiscal year, 91.2% of a school district's funding came from the base year amount and 8.8% of state education funding was distributed from the Fair Funding Formula.⁵⁶ The following fiscal year, 88.8% of a school district's funding came from the base year amount and 11.2% was distributed from the Fair Funding Formula.⁵⁷

The gap between funding through the Formula and hold harmless base year amount is slowly closing because of two main considerations.⁵⁸ First, the Commonwealth was concerned that an immediate elimination of the longstanding hold harmless system may produce a negative impact on school districts.⁵⁹ For example, total elimination of the hold harmless system was projected to result in 320 out of 500 school districts losing a combined one billion dollars in funding.⁶⁰ Second, Pennsylvania did not want new money to be subject to the hold harmless system.

⁵² HOUSE APPROPRIATIONS COMM., *supra* note 23, at 4.

⁵³ *Id.* The current base year that school districts are held harmless to is 2014–15. *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* In the 2020–21 school year, the Fair Funding Formula was suspended because of the COVID-19 pandemic and each school district received the same amount of funding in the 2020–21 fiscal year as they did in the 2019–20 fiscal year. See Cassie Miller, *A Look at the 2020–2021 Stopgap Budget: How Pa. is Paying for K-12 Schools and Higher Ed.*, PA. CAPITAL-STAR (July 6, 2020, 6:30 AM), <https://www.penncapital-star.com/covid-19/a-look-at-the-2020-2021-stopgap-budget-how-pa-is-paying-for-schools-and-higher-ed-the-numbers-racket/>.

⁵⁸ HOUSE APPROPRIATIONS COMM., PA'S FAIR FUNDING FORMULA EXPLAINED 6 (Comm. Print 2018), https://www.pahouse.com/Files/Documents/Appropriations/series/3013/BEFC_BP_011018.pdf.

⁵⁹ *Id.*

⁶⁰ *Id.*

Rather, the Commonwealth wanted the new money to flow through the Fair Funding Formula.⁶¹

C. Local Revenue

Because the state and federal government contributions account for only about 43.5% of school funding, local school districts must contribute the remaining 56%.⁶² This reliance on local school districts raising a substantial portion of revenue dates back to the 1870s.⁶³ “[T]he Framers [of the 1873 amendment to the Pennsylvania Constitution] endorsed the concept of local control to meet diverse local needs and took notice of the right of local communities to utilize local tax revenue to expand educational programs subsidized by the state.”⁶⁴ Today, this local tax revenue is primarily raised through property taxes.

In Pennsylvania, local governments and school districts set the property tax rates.⁶⁵ Property taxes are based on the county’s assessed value of a specific property, which is different from the property’s fair market value.⁶⁶ Counties assess properties based on the “common-level ratio,” which is an “unweighted average of the assessment ratios for all arms-length real estate sales occurring in a particular calendar year.”⁶⁷ The calendar year is referred to as the “base year.”⁶⁸ This base year does not provide for counties to take into account market fluctuations.⁶⁹ For example,

⁶¹ *See id.*

⁶² NAT’L EDUC. ASS’N, *supra* note 10, at tbl. F-4.

⁶³ *See* DEBATES OF THE CONVENTION TO AMEND THE CONSTITUTION OF PENNSYLVANIA 422–26 (Harrisburg, B. Singerly 1873).

⁶⁴ *Danson v. Casey*, 399 A.2d 360, 367 (Pa. 1979).

⁶⁵ Josh Davis, Note, *Reassessing the Alternatives: The Elimination of Pennsylvania Property Taxes, The Consequences and How Property Assessment Laws Could Help*, 80 U. PITT. L. REV. 687, 690 (2019). Pennsylvania is one of the only states that allows the local governments to set the property tax rates—many other states set the guidelines for how property taxes are determined. *Id.*

⁶⁶ *Id.* at 693.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Steven V. Melnik & David S. Cenedella, *Real Property Taxation and Assessment Processes: A Case for a Better Model*, 12 N.Y.U. J. LEGIS. & PUB. POL’Y 259, 268 (2009).

a new-build property in 2023 will be assessed for property taxes on 1998 property valuations if the county uses a 1998 “base year.”⁷⁰

This “base year system” results in many properties being under-assessed and others being taxed beyond their current fair market value.⁷¹ This system is criticized for its disproportionate effects in different counties.⁷² However, even if properties were reassessed on a more frequent basis, basing public education funding on property taxes and property values would continue to result in significant differences in the ability to raise funds and the amounts raised between counties. This difference is best illustrated by two Pennsylvania counties: Berks County and Chester County.

Berks County is located between Philadelphia and Harrisburg and is home to eighteen different school districts, including Reading School District. Reading has drawn significant attention in recent years because of the devastating poverty that afflicts the town that this district lies in,⁷³ resulting in a median household income of approximately \$39,000 and median home value of approximately \$83,000.⁷⁴

Chester County is located an hour west of Philadelphia and is comprised of twelve school districts—including one of the best school districts in the state, Tredyffrin/Easttown School District (“TESD”), which is located in the town of

⁷⁰ See John J. Murphy III, *Why Pennsylvania’s Flawed Property Tax Assessment System Should be a Legislative Priority*, PHILA. BUS. J. (Aug. 3, 2017), <https://www.bizjournals.com/philadelphia/news/2017/08/03/why-pennsylvanias-flawed-property-tax-assessment.html>.

⁷¹ See *id.*

⁷² See Davis, *supra* note 65; Murphy III, *supra* note 70; see also *Valley Forge Towers Apts. v. Upper Merion Area Sch. Dist.*, 163 A.3d 962 (Pa. 2017) (holding that the school district’s policy of selectively reassessing commercial properties violated the Pennsylvania Constitution’s uniformity clause); *Clifton v. Allegheny County*, No. GD05-028638, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202, at *47 (Pa. Ct. Com. Pl. June 6, 2007) (“[E]ntering a court order declaring that the provisions in Pennsylvania’s assessment laws which allow a county to arrive at actual value by using a base year market value violate[s] the Uniformity Clause of the Pennsylvania Constitution.”).

⁷³ Sabrina Tavernise, *Reading, Pa., Knew It Was Poor: Now It Knows Just How Poor*, N.Y. TIMES (Sept. 26, 2011), <https://www.nytimes.com/2011/09/27/us/reading-pa-tops-list-poverty-list-census-shows.html>. Reading schools are reportedly dealing with “aging buildings with broken floor tiles, leaky ceilings, sprouting patches of mold, students crammed into too-small classrooms, and feral cats squatting under classroom trailers.” Amanda Litvinov, *‘These Kids Are Just Pawns’: The Rising Toll in Inequitable School Funding*, NEA NEWS (July 20, 2015), <https://www.nea.org/advocating-for-change/new-from-nea/these-kids-are-just-pawns-rising-toll-inequitable-school-funding>.

⁷⁴ *QuickFacts, Chesterbrook CDP, Pennsylvania; Reading City, Pennsylvania; Chester County, Pennsylvania*; and *Berks County, Pennsylvania*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/chesterbrookcdppennsylvania,readingcitypennsylvania,chestercountypennsylvania,berkscountypennsylvania/PST045221> (last visited Sept. 8, 2023).

Chesterbrook. Chester County is consistently ranked as one of the richest counties in the state and has been voted one of the best places to live in America.⁷⁵ There, the median average household income is approximately \$110,000 and the median home value is approximately \$384,000.⁷⁶

Comparing median households in Bucks County to median households in Chester County illustrates how property tax rates produce inequitable results:

If Reading implements a property tax rate of 4%, the median average home value of \$83,000 will yield \$3,320 per property. On the other hand, if Chesterbrook implements the same property tax rate of 4%, the median average home value of \$384,000 will yield \$15,360 per property. *For Reading to achieve the same results as Chesterbrook, Reading would need to implement a tax rate of 18.5%—a 462.5% increase.*

These disparities and continual legislative inaction pushed parents, school districts, and advocacy groups to turn to the judicial system for a solution.

II. EDUCATION LITIGATION

A. *Education Litigation in the United States*

Initial education litigation tackled discrimination and disparities for disadvantaged children.⁷⁷ These discrimination lawsuits laid important groundwork for addressing the numerous faults in the public education system.⁷⁸ In *Brown v. Board of Education*, the United States Supreme Court unanimously ruled that racial segregation violated the Equal Protection Clause of the Fourteenth Amendment.⁷⁹ In

⁷⁵ *Best Public High Schools in Pennsylvania*, STACKER (Apr. 5, 2022), <https://stacker.com/pennsylvania/best-public-high-schools-pennsylvania>; *Highest-Earning Counties in Pennsylvania*, STACKER (July 6, 2022), <https://stacker.com/pennsylvania/highest-earning-counties-pennsylvania>; Marisa Magnatta, *Chesterbrook, PA Voted Best Place in America to Live*, WMMR (Mar. 19, 2021), <https://wmmr.com/2021/03/19/chesterbrook/>.

⁷⁶ U.S. CENSUS BUREAU, *supra* note 74.

⁷⁷ DAPHNE A. KENYON, *THE PROPERTY TAX—SCHOOL FUNDING DILEMMA* 8 (2007), https://www.lincolnst.edu/sites/default/files/pubfiles/the-property-tax-school-funding-dilemma-full_0.pdf.

⁷⁸ *Id.*

⁷⁹ *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954).

its decision, the Court stressed the importance of education and a state's duty to provide an equal education:

Today, *education is perhaps the most important function of state and local governments*. Compulsory school attendance laws and the *great expenditures* for education both demonstrate our recognition of the importance of education to our democratic society. . . . It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. *Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.*⁸⁰

Following the Court's ruling, education litigation began to challenge public school funding under Equal Protection Claims.⁸¹ In the late 1960s, nearly two identical lawsuits from Illinois and Virginia challenged the public education funding systems of those states as violating the Fourteenth Amendment.⁸² In *McInnis v. Shapiro*, the plaintiffs argued that Illinois's public education funding system violated their Fourteenth Amendment rights to equal protection and due process because the state allowed large variation in per student expenditures and failed to distribute funds based on individual school district needs.⁸³ Similarly, in *Burruss v. Wilkerson*, the plaintiffs brought an Equal Protection Claim alleging Virginia's public school funding formula created and perpetuated disparities in educational opportunities throughout its school districts.⁸⁴ Ultimately, both cases were dismissed because there was a lack of judicial standards to measure student needs, and even if student needs

⁸⁰ *Id.* at 493 (emphasis added).

⁸¹ KENYON, *supra* note 77, at 9.

⁸² See Jane McDonald, Robert Kaplow & Paul Chapman, *School Finance Reforms: The Role of U.S. Courts from 1968–1998*, at 23 NAT'L F. OF EDUC. ADMIN. & SUPERVISION J. 1, 3 (2006).

⁸³ *McInnis v. Shapiro*, 293 F. Supp. 327, 328 (N.D. Ill. 1968). In this case, the plaintiff represented several high school and elementary school students who attended four school districts in Cook County, Illinois. *Id.*

⁸⁴ *Burruss v. Wilkerson*, 310 F. Supp. 572, 573 (W.D. Va. 1969). This case was brought on behalf of the Virginia school children, parents of the children, and local property owners. *Id.*

were measurable, the courts were uncertain how those needs could be met through judicial relief.⁸⁵

After failure in those early cases, a new litigation approach focusing on disparities in school district property wealth emerged.⁸⁶ In 1971, *Serrano v. Priest* (“*Serrano I*”) set a short-lived precedent for public school financing that became known as the first of three waves of education litigation.⁸⁷ In *Serrano I*, plaintiffs asserted that the California public school funding system violated the state and federal constitution because the system was based on wealth generated from local property taxes.⁸⁸ The court agreed and concluded that the California public school funding system produced substantial revenue disparities among the school districts.⁸⁹ Further, the court noted, “[b]y our holding today[,] we further the cherished idea of American education that in a democratic society[,] free public schools shall make available to all children equally the abundant gifts of learning.”⁹⁰ This momentary victory was later overruled in *Serrano II*, where the court recognized new Supreme Court precedent by holding that the California school funding system violated the Equal Protection Clause of the Fourteenth Amendment.⁹¹

That new Supreme Court precedent which altered the *Serrano I* and *Serrano II* decisions came from *San Antonio Independent School District v. Rodriguez*.⁹² In 1973, parents from an urban Texas school district filed a class action lawsuit, arguing that the Texas public school funding system was unconstitutional under the Equal Protection Clause of the Fourteenth Amendment.⁹³ The plaintiff parents claimed that

⁸⁵ KENYON, *supra* note 77, at 9.

⁸⁶ *Id.*

⁸⁷ *Id.* at 10.

⁸⁸ *Serrano v. Priest*, 487 P.2d 1241, 1245 (Ca. 1971). The court concluded that the relevant California constitutional provisions were “substantially the equivalent” of the Equal Protection Clause of the Fourteenth Amendment to the federal constitution; thus, the court’s analysis is applicable to both constitutional claims. *Id.* at 1249 n.11.

⁸⁹ *Id.* at 1265.

⁹⁰ *Id.* at 1266.

⁹¹ *Serrano v. Priest*, 557 P.2d 929, 949 (Ca. 1976). The court partially upheld the *Serrano I* decision under the California state constitution. *Id.*

⁹² *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973).

⁹³ *Id.* at 4. The class action was brought on behalf of those school children in Texas who were members of minority groups and those who were poor and resided in school districts with a low property tax base. *Id.*

Texas's reliance on property taxes to fund the public school system created wealth-based disparities and denied students their fundamental right to education.⁹⁴ Although the Court acknowledged the problems of Texas's public school funding system, it determined this problem could not be redressed under an Equal Protection Claim:

Thus, we stand on familiar ground when we continue to acknowledge that the Justices of this Court lack both the expertise and the familiarity with local problems so necessary to the making of wise decisions with respect to the raising and disposition of public revenues. Yet, we are urged to direct the States either to alter drastically the present system or to throw out the property tax altogether in favor of some other form of taxation. No scheme of taxation . . . has yet been devised which is free of all discriminatory impact. In such a complex arena in which no perfect alternatives exist, the Court does well not to impose too rigorous a standard of scrutiny lest all local fiscal schemes become subjects of criticism under the Equal Protection Clause.⁹⁵

The *Rodriguez* ruling sparked the transition to the second wave of litigation; litigants began to realize that state constitutions may afford greater protection than the federal constitution because many state constitutions explicitly mandate education standards.⁹⁶ For example, Delaware requires the state to provide “a general and efficient system.”⁹⁷ Virginia must ensure that public education is “high quality” and “continually maintained.”⁹⁸ And Montana goes beyond this to explicitly ensure “[e]quality of educational opportunity.”⁹⁹ However, even with these constitutional

⁹⁴ *Id.* at 47.

⁹⁵ *Id.* at 41.

⁹⁶ Corey Turner et al., *Why America's Schools Have a Money Problem*, NAT'L PUB. RADIO (Apr. 18, 2016, 5:00 AM), <https://www.npr.org/2016/04/18/474256366/why-americas-schools-have-a-money-problem>; see also McDonald, *supra* note 82, at 5 (“Advocates for school finance reform asked the courts to test if the fiscal policies of states satisfied the educational expectations that were expressed in state constitution[s].”).

⁹⁷ DEL. CONST. art. X, § 1.

⁹⁸ VA. CONST. art. VIII, § 1.

⁹⁹ MONT. CONST. art. X, § 1. Specifically, the Montana Constitution creates a duty that the state “shall fund and distribute in an equitable manner to the school districts the state’s share of the cost of the basic elementary and secondary school system.” *Id.*

duties, many state courts refuse to declare state funding systems unconstitutional.¹⁰⁰ In fact, there were only a handful of courts that invalidated the state funding systems under their own state constitutions.¹⁰¹ The general unwillingness of state courts to invalidate school funding systems on the basis of inequity pushed plaintiffs to the third wave of litigation where state funding systems were invalidated because they failed to provide an “adequate” education.¹⁰² Through all of the litigation waves, Pennsylvania has had a particularly challenging history with education litigation.

B. *Education Litigation in Pennsylvania*

Beginning in the 1970s, the Pennsylvania Supreme Court held that challenges to the state’s public school funding system are nonjusticiable,¹⁰³ as “it would be impossible to resolve the claims without making an initial policy determination of a kind which is clearly of legislative, and not judicial, discretion. . . .”¹⁰⁴ Often, these challenges allege violations of the state’s constitution’s Education Clause and its

¹⁰⁰ See *Lujan v. Colorado State Bd. of Educ.*, 649 P.2d 1005, 1011 (Colo. 1982) (holding that the Colorado school funding system did not violate the Colorado Constitution because the local school districts parameters on taxing authority are rationally related to the state’s purpose); *Hornbeck v. Somerset Cnty. Bd. of Educ.*, 458 A.2d 758, 776 (Md. 1983) (holding that a “thorough and efficient system[,]” as provided by the Maryland Constitution, means exact equality of per pupil funding and expenditures); *Olsen v. State*, 554 P.2d 139, 149 (Or. 1976) (holding that the Oregon school financing system, although not necessarily “politically or educationally desirable,” does not violate the state constitution); *Thompson v. Engelking*, 537 P.2d 635, 642 (Idaho 1975) (holding that the Idaho public education funding system, which was partly funded by local property taxes, did not violate the constitutional duty of a “general, uniform and thorough” public education system).

¹⁰¹ See *DuPree v. Alma Sch. Dist. No. 30*, 651 S.W.2d 90, 91 (Ark. 1983) (finding the state’s school funding system unconstitutional under the Equal Protection Clause of the state constitution); *Horton v. Meskill*, 376 A.2d 359, 374 (Conn. 1977) (declaring a school funding system unconstitutional because it was based primarily on local property taxes that resulted in large pupil disparities); *Helena Elementary Sch. Dist. No. 1 v. State*, 769 P.2d 684, 692–93 (Mont. 1989) (holding the state’s education funding system unconstitutional because it failed to provide equal educational opportunities); *Robinson v. Cahill*, 303 A.2d 273, 297–98 (N.J. 1973) (deciding the New Jersey school funding statute was unconstitutional because it violated the “thorough and efficient education” requirement set by the state constitution).

¹⁰² McDonald et al., *supra* note 82, at 7. The landmark adequacy case is *Rose v. Council for Better Education*—where the Kentucky Supreme Court declared the entire education system unconstitutional and mandated the state to “recreate and redesign” a new system. 790 S.W.2d 186, 212 (Ky. 1989); see also *Abbott v. Burke*, 575 A.2d 359, 410 (N.J. 1990) (finding that a sufficient education was one that allows the students of New Jersey “to perform their roles as citizens and competitors in the same society”); *Tenn. Sch. Sys. v. McWherter*, 851 S.W.2d 139, 156 (Tenn. 1993) (finding that the state did not have a legitimate interest to grant some citizens educational opportunities that are denied to other citizens).

¹⁰³ Whitney A. Petrie, *Litigating Education: The Quest to End Inequitable Funding in Pennsylvania*, 13 DREXEL L. REV. 277, 293 (2020).

¹⁰⁴ *Marrero v. Commonwealth*, 739 A.2d 110, 111 (Pa. 1999).

equal protection guarantees,¹⁰⁵ as the Pennsylvania Constitution states that the Commonwealth “shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.”¹⁰⁶ Using this constitutional framework, plaintiffs have challenged the public school funding system’s dependence on local property taxes because the system produces inequality and inefficiency.¹⁰⁷ However, even with this enumerated constitutional duty, the Pennsylvania courts have still been reluctant to listen to challenges to the education financing system.¹⁰⁸

1. *Danson v. Casey*

In the 1970s, the School District of Philadelphia (“SDP”) and parents of children attending Philadelphia public schools (“Plaintiffs”) brought a constitutional challenge to the state’s public education funding system.¹⁰⁹ Plaintiffs claimed that, because SDP’s expenditures exceeded its revenues, the school district would be forced to prematurely close its schools.¹¹⁰ Further, the plaintiffs claimed that “the Pennsylvania system of school financing fails to provide Philadelphia’s public school children with a thorough and efficient education. . . .”¹¹¹

The Pennsylvania Supreme Court determined that the plaintiffs’ claims were insufficient to support a cause of action because it failed to show any legal harm from the school district’s projected financial deficit.¹¹² Further, the court pointed out that the phrase “thorough and efficient” cannot be narrowly construed as to requiring a “minimum level of educational services, provided to the children of all other districts”:¹¹³

¹⁰⁵ Petrie, *supra* note 103, at 293.

¹⁰⁶ PA. CONST. art. III, § 14.

¹⁰⁷ See *infra* Part II.B.

¹⁰⁸ *Id.*

¹⁰⁹ *Danson v. Casey*, 399 A.2d 360, 362 (Pa. 1979).

¹¹⁰ *Id.* at 362.

¹¹¹ *Id.* at 363–64. The School District of Philadelphia is in a unique position regarding local taxation. *Id.* at 364. Generally, in Pennsylvania, the power to levy school taxes is vested in an elected school board. *Id.* at 364. However, in Philadelphia, the school board is appointed by the Philadelphia mayor and therefore does not have the direct power to levy school taxes. *Id.*

¹¹² *Id.* at 365.

¹¹³ *Id.* at 366.

In considering laws relating to the public school system, courts will not inquire into the reason, wisdom, or expediency of the legislative policy with regard to education. . . . The very essence of this section is to enable successive legislatures to adopt a changing program to keep abreast of educational advances. The people have directed that the cause of public education cannot be fettered, but must evolute or retrograde with succeeding generations as the times prescribe. Therefore, all matters, whether they be contracts bearing upon education, or legislative determinations of school policy or the scope of educational activity, everything directly related to the maintenance of a “thorough and efficient system of public schools,” must at all times be subject to future legislative control. One legislature cannot bind the hands of a subsequent one; otherwise we will not have a thorough and efficient system of public schools.¹¹⁴

The court also determined that, even if it determined what is included in a “thorough and efficient education,” the only judicially manageable standard the court may adopt would be a rigid rule requiring each student to receive the same dollar expenditures.¹¹⁵ However, the court refused to adopt this rule because the clear differences between school districts necessitated different expenditures.¹¹⁶ Finally, the court concluded that it does not have the power to shift the burden of raising local revenues to the state and may not intrude upon the public education financing system.¹¹⁷

2. *Pennsylvania Associations of Rural and Small Schools v. Ridge*

In 1998, the Pennsylvania Association of Rural and Small Schools (“PARSS”) attempted to battle the unconstitutionality of the Pennsylvania public education funding system:

[T]here exists a disparity between the amount spent on education among Pennsylvania’s . . . school districts, resulting in a corresponding disparity in education students are receiving. They argue that property-rich districts are able to spend more on educating their students even though they expend less “effort” (i.e., have a lower tax rate) than poorer districts, even taking into account the

¹¹⁴ *Id.* at 366 (citing *In re Teachers’ Tenure Act Cases*, 197 A. 344, 352 (Pa. 1938)).

¹¹⁵ *Danson*, 399 A.2d at 366.

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 367.

greater subsidy poorer districts receive from the General Assembly. This disparity in funding, they argue, is a result of an unconstitutional educational funding scheme adopted by the General Assembly allowing wealthy, i.e., property-rich school districts, to have more funds available to educate their students.¹¹⁸

The court delivered a detailed and extensive opinion that outlined the history of education in Pennsylvania, the different financing systems the state has implemented, the disparity between school districts, and the impact of this disparity.¹¹⁹ Again, however, the court relied on *Danson* and determined that PARSS failed to meet this burden in proving that the present system of funding resulted in a substantial number of districts not having the funds to provide a “basic or minimal education” for its students.¹²⁰ The court concluded that there was no evidence that any child in the school districts received an “inadequate education” and that it is “within the discretion of the local school board or the General Assembly” to provide resources above a basic education.¹²¹

3. *Marrero v. Commonwealth*

One year after the *PARSS* decision, the Pennsylvania public school funding system was brought back to the courts by the City of Philadelphia, the School District of Philadelphia, the students and parents residing within the Philadelphia school district, the Philadelphia branch of the NAACP, and Aspira, Inc.¹²² Again, the plaintiffs claimed that the “General Assembly violated the Pennsylvania Constitution by failing to provide adequate funding for the Philadelphia School District in violation . . . of the constitution which obligates the General Assembly to ‘provide

¹¹⁸ Pa. Ass’n of Rural & Small Sch. v. Ridge, No. 11 M.D. 1991, 1998 LEXIS 1, at *2–3 (Pa. Commw. Ct. July 9, 1998), *aff’d*, 737 A.2d 246, 247 (Pa. 1999). PARSS is an advocacy and service organization operating to ensure that rural students in Pennsylvania have access to quality education. *Who We Are*, PA. ASS’N OF RURAL AND SMALL SCH., https://www.parss.org/Who_We_Are (last visited Mar. 29, 2022).

¹¹⁹ *Ridge*, 1998 LEXIS at *1–*119.

¹²⁰ *Id.* at *49–50.

¹²¹ *Id.*

¹²² *Marrero v. Commonwealth*, 739 A.2d 110 (Pa. 1999). This case is often referred to as *Marrero II* after the Pennsylvania Supreme Court affirmed the holding of the Commonwealth Court, known as *Marrero I*. *Marrero ex rel. Tabales v. Commonwealth*, 709 A.2d 956 (Pa. Commw. Ct. 1998). Aspira, Inc. is a nonprofit organization that works to address the high dropout rates and low educational attainment of Puerto Rican youth by focusing on education and leadership development among the Hispanic community. *About Us*, ASPIRA INC. OF PA., https://www.aspirapa.org/apps/pages/index.jsp?uREC_ID=1415468&type=d&pREC_ID=1608185 (last visited Aug. 10, 2023).

for the maintenance and support of a thorough and efficient system of public education.”¹²³ And again, the court determined that it was unable to “judicially define what constitutes an ‘adequate’ education or what funds are ‘adequate’ to support [a normal program of educational services].”¹²⁴

In reaching this conclusion, the court relied on the *Baker v. Carr* factors to determine whether this claim should be addressed by another branch of the government rather than the judiciary and whether it is therefore a nonjusticiable political question.¹²⁵ In doing so, the Pennsylvania Supreme Court expanded on the analysis of the Commonwealth Court, which primarily relied on *Danson*:

The court correctly understood *Danson*’s interpretation of the [state] constitution’s mandate that the legislature provide for a thorough and efficient system of public education “not [to] confer an individual right upon each student to a particular level or quality of education, but, instead, [to] impose a constitutional duty upon the legislature to provide for the maintenance of a thorough and efficient system of public schools throughout the Commonwealth.”¹²⁶

With this view in mind, the Pennsylvania Supreme Court affirmed that imposing a judicial standard of education policy would frustrate the legislature’s ability of “free experimentation” to achieve the best possible educational services.¹²⁷

Together, *Danson*, *PARRS*, and *Marrero* demonstrate the Pennsylvania judicial system’s refusal to address the legality of public education funding. This refusal remained as precedent until 2017, when the Pennsylvania Supreme Court reversed

¹²³ *Marrero*, 739 A.3d at 111.

¹²⁴ *Id.* at 113–14.

¹²⁵ *Id.* at 112. This analysis requires the court to determine whether a matter has been exclusively committed by the Pennsylvania constitution to another branch of the government. See *Sweeney v. Tucker*, 375 A.2d 698, 706 (Pa. 1977) (citing *Baker v. Carr*, 369 U.S. 186, 211 (1962)).

¹²⁶ *Marrero*, 739 A.3d at 112 (alterations and emphasis in original) (quoting *Marrero* by *Tabales v. Commonwealth*, 709 A.2d 956, 961–62 (Pa. Commw. Ct. 1998)) (citing *Danson v. Casey*, 399 A.2d 360 (Pa. 1979)).

¹²⁷ *Id.*

its position and determined that challenges to Pennsylvania's school funding scheme are justiciable.¹²⁸

III. THE TURNING POINT: *WILLIAM PENN SCHOOL DISTRICT V. PENNSYLVANIA DEPARTMENT OF EDUCATION*

Following the decision in *Marrero*, fifteen years passed before the state's public education funding was brought back to the judicial system. In that time, the Pennsylvania education system faced scrutiny for its systemic inequity and inequality.¹²⁹ These systemic problems ultimately led to the filing of a new lawsuit, which went on to open the doors for challenges of the state's public education funding system.

A. *The Initial Commonwealth Court Decision*

In November 2014, six school districts, seven parents, PARSS, and the Pennsylvania NAACP ("Petitioners") filed suit in the Commonwealth Court against the Governor, the Department of Education, the State Board of Education, and other legislative leaders ("Respondents").¹³⁰ Petitioners asserted two claims and argued that the Pennsylvania Constitution creates a fundamental right for all public school students to obtain an adequate education.¹³¹

¹²⁸ William Penn Sch. Dist. v. Pa. Dep't of Educ., 170 A.3d 414, 418 (Pa. 2017).

¹²⁹ Gillian B. White, *The Data Are Damning: How Race Influences School Funding*, THE ATLANTIC (Sept. 30, 2015), <https://www.theatlantic.com/business/archive/2015/09/public-school-funding-and-the-role-of-race/408085/> ("In Pennsylvania, the crisis is particularly acute. . . . Pennsylvania is also one of the only states in the country that hasn't had a specific formula in place for distributing government aid to its districts."); Peter Greene, *Pennsylvania Leads the Nation in Educational Inequity*, FORBES (Oct. 13, 2022, 12:58 PM), <https://www.forbes.com/sites/petergreene/2022/10/13/pennsylvania-leads-the-nation-in-educational-inequity/?sh=72a2cd6b2b7e> ("This echoes a long-standing inequity in Pennsylvania public school funding. Because the state kicks in only about a third of public school funding, local districts that can afford to put a lot of money into their schools do so. Those that can't, don't."); Emma Brown, *In 23 States, Richer Schools Districts Get More Local Funding Than Poorer Districts*, WASH. POST (Mar. 12, 2015, 8:00 AM), <https://www.washingtonpost.com/news/local/wp/2015/03/12/in-23-states-richer-school-districts-get-more-local-funding-than-poorer-districts/> ("In Pennsylvania, for example, millions of dollars in state budget cuts to education during the past several years have contributed to a funding crisis in Philadelphia, a high-poverty district where many schools don't have full-time counselors or nurses, and where parents contribute funds to help buy such essentials as paper.").

¹³⁰ William Penn Sch. Dist. v. Pa. Dep't of Educ., 114 A.3d 456, 457–58, nn.1–2 (Pa. Commw. Ct. 2015) (*en banc*).

¹³¹ *Id.* at 458.

First, Petitioners contended that the state breached its constitutional duty by failing to provide sufficient resources to meet the statewide academic standards and assessments because current public education funding levels are “irrational, arbitrary and not reasonably calculated” to meet these goals.¹³² Second, Petitioners argued that education is a fundamental right that requires each student be treated equally—thereby presenting all students with the same opportunities to meet the statewide academic standards and assessments.¹³³ Specifically, Petitioners claimed that the current public school funding system discriminated against the identifiable class of students living in low income and low property value school districts and thus the funding system violated the Equal Protection Clause.¹³⁴ However, Respondents argued that the Petitioners’ claim should not be decided by the courts because the claim was based on a nonjusticiable political question under *Danson* and *Marrero*.¹³⁵ Additionally, Respondents argued that Petitioners failed to state a claim for which relief can be granted under the Education Clause because the funding system serves the rational basis of “preserving local control over public education.”¹³⁶ Third, Respondents argued that there is a rational basis for the current public school funding

¹³² *Id.* at 458–59. The Petitioners bring forth the Pennsylvania System of School Assessment (“PSSA”), Keystone examinations, and the state’s academic Core Standards as the statewide academic standards and assessments. *Id.* The PSSA exams are legislatively enacted assessments that test proficiency in reading, writing, math, and science. Petition for Rev. in the Nature of an Action for Declaratory and Injunctive Relief at para. 110, *William Penn Sch. Dist. v. Pa. Dep’t of Educ.*, 114 A.3d 456 (Pa. Commw. Ct. 2015) (No. 587 M.D. 2014). The Keystone Exams are legislatively enacted exams for eleventh graders that test proficiency in math, reading, and science. *Id.* at 459 n.9. The Common Core are described as “what students should know and be able to do by the end of select grade levels for each of the academic and core standards[.] . . .” *Id.* at 459 n.11.

¹³³ *William Penn Sch. Dist.*, 114 A.3d at 460. Specifically, the Petitioners asked the court to find that: (1) public education is a fundamental right to all Pennsylvania school-age children; (2) the state constitution requires that all students receive an adequate education; (3) the current public school funding violates the state constitution; (4) the state’s equal protection clause requires the state to deliver a level of funding that does not discriminate on income tax or property tax; (5) the current public school funding system violates the state’s equal protection clause because it allows school districts with higher property values and incomes opportunity to meet statewide academic standards and assessments, while districts with lower property values are denied those same opportunities; (6) the disparities in school district funding is neither fulfilling any compelling governmental interest nor rationally related to any legitimate government objective; and (7) Respondents violated Petitioners’ constitutional rights by enacting the current public school funding system. *Id.* at 461.

¹³⁴ *Id.* at 460.

¹³⁵ *Id.* at 461–62.

¹³⁶ *Id.*

because it is related to a legitimate governmental objective—maintaining local control over education—and thus should not be subject to such scrutiny.¹³⁷

Keeping with precedent from *Marrero* and *Danson*, the court determined that it was precluded from addressing Petitioners’ claim because it was a nonjusticiable political question.¹³⁸ The court briefly explained that what constitutes an “adequate” education is a political question; because the court was unable to determine what an “adequate” education is, it could not determine the amount of funding required to achieve the required proficiencies in the academic standards and assessments.¹³⁹ As such, the court concluded that both of these decisions were “legislative policy determination[s] that [have] been solely committed to the General Assembly. . . .”¹⁴⁰

B. *The Pennsylvania Supreme Court Decision*

On appeal, the Pennsylvania Supreme Court overruled almost forty years of precedent when it determined that Petitioners’ constitutional challenge to the state public school funding system is a justiciable claim.¹⁴¹ In an eighty-six-page opinion, Justice Wecht began with the fundamental principle that was set forth in *Marbury v. Madison*: the judicial system is given the power to check the acts or omissions of the other governmental branches.¹⁴² Next, the opinion comprehensively detailed the history of public education and funding in Pennsylvania starting with the late seventeenth century and continuing to the present.¹⁴³ With this tone established, the court proceeded to outline Petitioners’ argument while bringing forth Petitioners’

¹³⁷ *Id.* at 462. The Legislative Respondents and the Executive Respondents assert separate but similar claims. *Id.* at 461–62. Specifically, both Respondents argue that Petitioners’ claims are nonjusticiable political questions and the current public school funding system is rationally related to governmental interests. *Id.* at 461. However, the Executive Respondents put forth two additional arguments that Petitioners’ claims are barred by sovereign immunity and by the separation of powers doctrine. *Id.* The Legislative Respondents specify that Petitioners fail to state a claim upon which relief can be granted under the Education Clause *and* the Equal Protection Clause of the state constitution because the current public school funding system is rationally related to preserving local control over public education. *Id.* at 462.

¹³⁸ *Id.* at 464.

¹³⁹ *Id.* at 463–64 (citing *Marrero v. Commonwealth*, 739 A.2d 110, 112–13 (Pa. 1999) (citing *Danson v. Casey*, 399 A.2d 360, 366 (1979))).

¹⁴⁰ *Id.*

¹⁴¹ *William Penn Sch. Dist. v. Pa. Dep’t of Educ.*, 170 A.3d 414, 417–18 (Pa. 2017).

¹⁴² *Id.* at 418 (citing *Marbury v. Madison*, 5 U.S. 137 (1803)).

¹⁴³ *Id.* at 418–25.

detailed account of the effects of wealth disparities between school districts, the elimination of teacher positions and educational programs, the reduction of classroom resources, and the impact of these factors on students ability to meet academic standards.¹⁴⁴

In assessing the Petitioners' Education Clause claim, the court focused on the first three *Baker v. Carr* factors: "a textually demonstrable commitment to the General Assembly, a lack of judicially discoverable and manageable standards, and an inability to decide the question without an initial policy determination not appropriate for judicial discretion."¹⁴⁵ Regarding the first factor, the court determined that the state constitution does not explicitly or implicitly call for the Pennsylvania legislature to "self-monitor" its duty toward "a thorough and efficient system of public education."¹⁴⁶

Turning to the second factor, the court pointed to other state courts that determined constitutional challenges to a state's Education Clause as justiciable.¹⁴⁷ Specifically, the court stated that, "[t]hese many decisions stand for the proposition that . . . a substantial majority of American jurisdictions have declined to let the potential difficulty and conflict that may attend constitutional oversight of education dissuade them from undertaking the task of judicial review."¹⁴⁸ The court clarified that their inability to formulate a judicially discoverable and manageable standard did not mean that the court would "rubber stamp" judicial review in the name of precedent.¹⁴⁹ Instead, the court overruled *Marrero* because of its "irreconcilable deficiencies" in its interpretation and application of the state constitution.¹⁵⁰

The court proceeded to clarify the difference in Petitioner's Education Clause Claim with their Equal Protection Claims and ruled that the latter is controlled by the

¹⁴⁴ *Id.* at 428–32. While Petitioner's claims ultimately remain the same, they ask for this Court to determine whether the political question doctrine: (1) bars the court from "considering whether the legislature has complied with its constitutional duty to support a thorough and efficient system of public education," and (2) "preclude[s] students in low-wealth school districts from asserting an equal protection claim to protect their individual constitutional rights." *Id.* at 434.

¹⁴⁵ *Id.* at 446.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 453.

¹⁴⁸ *Id.* at 455.

¹⁴⁹ *Id.* at 456.

¹⁵⁰ *Id.* at 457.

court's analysis of the former and therefore is a justiciable question.¹⁵¹ Further, the court confirmed that whether education is a fundamental right is an unsettled question under Pennsylvania law.¹⁵² Thus, Petitioners should have the opportunity to “substantiate and elucidate the classification at issue and to establish the nature of the right to education, if any, to determine what standard of review the lower court must employ to evaluate their challenge.”¹⁵³

C. *The 2023 Commonwealth Court Decision*

It has been over fifty years since the Supreme Court of Pennsylvania handed down its decision in *Danson* and the judicial fight over education funding in the Commonwealth began.¹⁵⁴ Since *Danson*, many have been unsuccessful in challenging Pennsylvania's public school funding system—until the *William Penn School District* Petitioners.¹⁵⁵ On February 2, 2023, Judge Renée Cohn Jubelirer historically declared Pennsylvania's school funding system unconstitutional.¹⁵⁶ In an almost 800-page opinion, the court determined that, under the Pennsylvania Constitution, education is a fundamental right and “the current system of funding public education has disproportionately, negatively impacted students who attend schools in low-wealth districts.”¹⁵⁷

The first issue the court tackled was defining the phrases “thorough and efficient” and “system of public education to serve the needs of the Commonwealth.”¹⁵⁸ The court used the definitions from the time of the enactment of the amendment because that was when these phrases were added to the Education Clause.¹⁵⁹ The court found “thorough” to mean an education “that is full or

¹⁵¹ *Id.* at 460 (“[W]e find ourselves confronting our ruling as to the justiciability of the Education Clause claim, which leads to the same result in this instance. All of which is to say, our foregoing ruling effectively compels us to determine that Petitioner's equal protection claim is justiciable in the general sense.”).

¹⁵² *Id.* at 461.

¹⁵³ *Id.* at 464.

¹⁵⁴ *See supra* Part II.B.1.

¹⁵⁵ *See supra* Part II.B.

¹⁵⁶ *William Penn Sch. Dist. v. Pa. Dep't of Educ.*, 294 A.3d 537 (Pa. Commw. Ct. Feb. 7, 2023).

¹⁵⁷ *Id.* at 960.

¹⁵⁸ *Id.* at 876.

¹⁵⁹ *Id.* at 883.

complete.”¹⁶⁰ The court found “efficient” to mean education that is “effective or competent to produce the intended effect.”¹⁶¹

Finally, in analyzing the phrase “to serve the needs of the Commonwealth,” the court used the plain meaning and the history of the Education Clause to determine the purpose of the phrase to include “not only to educate children, but also ensure those children have the opportunity to become productive members of society when they become older.”¹⁶² Taken together, the court determined that a “thorough and efficient system of public education to serve the needs of the Commonwealth” requires the Pennsylvania General Assembly “to provide a full or complete system of public education that is effective in producing students who, as adults, can participate in society, academically, socially, and civically, which thus serves the needs of the Commonwealth.”¹⁶³

After determining the Education Clause requirements for the legislature, the court determined the appropriate measure for those requirements “is whether **every** student is receiving a **meaningful opportunity** to succeed academically, socially, and civically, which requires that **all** students have access to a comprehensive, effective, and contemporary system of public education.”¹⁶⁴ Once the necessary analytical framework was set, the court next tackled whether the legislature is fulfilling their constitutional obligation and meeting the above-mentioned standard.¹⁶⁵ To determine whether the legislature is fulfilling its constitutional obligation, the court recognized that Petitioners must show that the legislature is “clearly, palpably, and plainly” violating the Pennsylvania Constitution.¹⁶⁶ This standard is often placed on a party challenging the constitutionality of a statute; however, the court found this standard applies to challenges under the Education Clause because the fulfillment of the legislature’s constitutional mandate and the legislative process are “inextricably tied.”¹⁶⁷

¹⁶⁰ *Id.* at 884–85. Additionally, the Court examined the way other state courts defined “thorough” and/or “efficient” in the context of their respective constitutions. *Id.* at 886–92.

¹⁶¹ *Id.* at 884–85.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.* at 886.

¹⁶⁵ *Id.* at 893.

¹⁶⁶ *Id.* at 908.

¹⁶⁷ *Id.*

To properly evaluate the constitutionality of the public education system, the court looked at the inputs and outputs of the system. In regard to inputs, the court looked to funding, curricula, staff, facilities, and instrumentalities of learning.¹⁶⁸ Regarding funding, the court found that because over half of public school funding comes from local property taxes, the “low-wealth districts cannot generate enough revenue to meet the needs of their students.”¹⁶⁹ Next, the court called attention to numerous school districts that are lacking in their courses, curricula, and programs. Specifically, the court looked at the lack of class offerings and curriculum that fails to meet state standards because schools do not have the resources to meet them.¹⁷⁰

The court also pointed out the lack of staffing throughout public schools. Specifically, some school districts are not replacing retired teaches because of “inadequate funding” while other school districts have teachers teaching “multiple classes of different subjects **simultaneously**.”¹⁷¹ Further, in certain districts, the student-to-teacher ratios presented numerous situations where one teacher would oversee 25–30 students.¹⁷² The next input considered was the facilities, for which the court described numerous instances where public schools lack air conditioning, white boards partition a single classroom into two classrooms, and lead paint and mold are present.¹⁷³ Finally, the court addressed the instrumentalities of learning, which turned on outdated or absence of necessary textbooks and lack of technology.¹⁷⁴

The court then analyzed the outputs of student performance, based primarily on the results of state assessments.¹⁷⁵ From the evidence presented, the court determined

¹⁶⁸ *Id.* at 909–26.

¹⁶⁹ *Id.* at 911.

¹⁷⁰ *Id.* at 911–16.

¹⁷¹ *Id.* at 916.

¹⁷² *Id.* at 916–18.

¹⁷³ *Id.* at 920–23.

¹⁷⁴ *Id.* at 923–26.

¹⁷⁵ *Id.* at 926–37. The court also examined the growth, national measures, high school graduation rates, and postsecondary attainment rates. *Id.* Regarding state assessments, the court looked at the PSSA and Keystone Exams. The PSSA is standards-based test that every Pennsylvania student must take between third and eighth grade. *Pennsylvania System of School Assessment (PSSA)*, DEP’T. OF EDUC., <https://www.education.pa.gov/K-12/Assessment%20and%20Accountability/PSSA/Pages/default.aspx> (last visited June 1, 2023). In contrast, the Keystone Exams are another state assessment taken in eleventh grade, but for the purposes of “federal accountability.” *Keystone Exams*, DEP’T. OF EDUC., <https://>

that students across the state “are not reaching ‘proficiency’ levels.”¹⁷⁶ The court found the difference between students in the lowest wealth districts and highest wealth districts scoring “proficient” or “advanced” on state assessments is as follows: 24.5% in science and biology, 28% in literature, and 30.8% in math and algebra.¹⁷⁷ Further, the court touched on race achievement gaps by highlighting the differences between Black and Hispanic students to their White peers.¹⁷⁸ Black students scored “advanced” or “proficient” at a rate 37% lower than their White peers in math, and only 24.54% of Hispanic students scored “advanced” or “proficient” in math.¹⁷⁹ These statistics, coupled with testimony detailing how wealthier and resource abundant school districts have been able to increase performance, persuaded the court that if low-wealth school districts have access to the resources wealthier school district provide, then “economically-disadvantaged students and historically underperforming students can overcome challenges.”¹⁸⁰

The last issue the court tackled was whether the Respondents violated the Equal Protection Clause of the Pennsylvania Constitution.¹⁸¹ Prior to making its determination, the court concluded that education is a fundamental right.¹⁸² Specifically, the court declared that, based on the constitutionally imposed duty to fund education, the deep-rooted dedication to education in the history of the Education Clause, and treatment of other similarly situated jurisdictions, education is a fundamental right.¹⁸³

Once education was deemed a fundamental right, the court examined the Petitioner’s Equal Protection challenge under strict scrutiny, which requires the Respondent to present “a compelling government interest” for the current funding

www.education.pa.gov/K-12/Assessment%20and%20Accountability/Keystones/Pages/default.aspx (last visited June 1, 2023).

¹⁷⁶ *William Penn Sch. Dist.*, 294 A.3d at 929. Specifically, the court highlighted that almost 40% of students taking the literature PSSA and over 50% of students taking math/algebra tested at “basic” or “below basic.” *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at 930.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at 931.

¹⁸¹ *Id.* at 937.

¹⁸² *Id.* at 947–48.

¹⁸³ *Id.* at 945–55.

system which “must be strictly construed.”¹⁸⁴ The court determined that the legislature’s reason for the current system—promoting local control—is not a “compelling government interest.”¹⁸⁵ The court questioned the persuasiveness of this reasoning because Respondents failed to present any evidence on how local control would be undermined if a more equitable system was introduced.¹⁸⁶ Additionally, the court pointed out that local control lacks meaning when low-wealth school districts lack the financial resources to fund the programs they “control.”¹⁸⁷ Thus, the court found there was no compelling government interest presented that justified “the disparities identified between low-wealth and high-wealth school districts.”¹⁸⁸

In summary, the court placed the burden of the remedy on the legislature.¹⁸⁹ The court acknowledged that this “approach respects the notion that the Education Clause contemplates that future legislatures must be free to experiment and adjust the state’s public-education system, thereby reducing concerns of the judiciary encroaching upon legislative prerogative.”¹⁹⁰ Notably, the court failed to establish a time range within which the legislature must remedy the system of public education funding.¹⁹¹

IV. WHAT’S NEXT?: IMMEDIATE STEPS AFTER A LANDMARK CASE

One month after Judge Renée Cohn Jubelirer handed down her monumental decision, newly elected Governor Josh Shapiro presented his budget, which allocated an additional \$567 million—or an 8% increase—to public education.¹⁹² However,

¹⁸⁴ *Id.* at 959.

¹⁸⁵ *Id.* at 960.

¹⁸⁶ *Id.* at 960–61.

¹⁸⁷ *Id.* at 961–62.

¹⁸⁸ *Id.* at 963.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.* at 961–65.

¹⁹² Press Release, Josh Shapiro, Pa. Governor, Governor Josh Shapiro Unveils Commonsense Budget to Address the Issues Pennsylvania Faces (Mar. 7, 2023), <https://www.governor.pa.gov/newsroom/governor-josh-shapiro-unveils-commonsense-budget-to-address-the-issues-pennsylvania-faces/#:~:text=Harrisburg%2C%20PA%20E2%80%93%20Today%2C%20Governor,has%20access%20to%20a%20Quality>.

there has not been any action taken outside of Shapiro's budget increase. Further, with no direction given to the legislature to create a more equitable public school funding system, the question remains as to what the legislature will do and when they will do it.

One option is to implement the practices used in Vermont—specifically, by eliminating the local property tax and instead implementing a statewide property tax to fund public education.¹⁹³ Another option is to merge Pennsylvania's 500 school districts into countywide school districts like Florida and Maryland.¹⁹⁴ Another possible, but unfortunate, outcome is that the legislature fails to take any significant action—an outcome that mirrors Ohio.¹⁹⁵

As mentioned, with no real guidance from the court on how to create a more equitable funding system and no time limit on when to create a more equitable funding system, the legislature may theoretically take years to act. Further, creating and implementing a new funding system will require time, research, and money. Therefore, to have a more immediate impact while developing a more equitable funding system, the legislature should take two steps: (1) make a more significant investment in public education; and (2) direct all state public education funding through the Fair Funding Formula.

As previously stated, the legislature needs to make a significant investment into the public school system. Governor Shapiro's current budget increase merely tracks inflation.¹⁹⁶ Additionally, the Level-Up allocation was notably absent from his budget.¹⁹⁷ This absence is important because Level-Up funding targets a portion of the state education funding to the most underfunded districts and guarantees those

¹⁹³ MARK PERRAULT & CHLOE WEXLER, LEGIS. JOINT FISCAL OFF., INTRODUCTION TO VERMONT'S EDUCATION FINANCE SYSTEM 2–3 (Jan. 2019). Although Vermont implemented a statewide property tax instead of a system akin to the bill's proposed state income and sales tax, it serves as an example of a state that shifted away from local property taxes.

¹⁹⁴ Petrie, *supra* note 103, at 314–15.

¹⁹⁵ Dan Heintz, *Teacher: Today Marks 26th Year of Lawmakers Being "Willfully Negligent" of Ohio Kids*, COLUMBUS DISPATCH (Mar. 24, 2023, 5:33 AM), <https://www.dispatch.com/story/opinion/columns/guest/2023/03/24/what-has-happened-since-ohios-supreme-court-declared-school-funding-unconstitutional-school-vouchers/70042749007/>.

¹⁹⁶ Jo Napolitano, *Pa. Gov's School Funding Increase Called Too Thin After Historic Court Win*, THE74 (Mar. 15, 2023), <https://www.the74million.org/article/pa-govs-school-funding-increase-called-too-thin-after-historic-court-win/>.

¹⁹⁷ *Id.*

underfunded districts will receive those funds every year.¹⁹⁸ These underfunded districts need these additional funds to make necessary repairs and assist in administration and operating costs.¹⁹⁹

Second, the legislature should direct all state funding for public education through the Fair Funding Formula to ensure that funds are being distributed based on district needs. It is not enough that additional money is being allocated to public education when a significant portion of that money fails to flow through the Hold Harmless provisions.²⁰⁰ As mentioned, 11% of the Commonwealth's current contribution to public education is flowing through the Fair Funding Formula, while the remaining amount is distributed through the Hold Harmless provisions.²⁰¹ Instead, the entirety of the Commonwealth's contribution to public education should flow through the Fair Funding Formula because it weighs factors such as poverty, English language learners, student and community differences, household income levels, etc.²⁰² The Level-Up supplement, partnered with the entirety of the Commonwealth's contribution flowing through the Fair Funding Formula, will distribute funding to the school districts that need it most.

CONCLUSION

“There is a systemic, widespread failure [in the public education system], and it is devastating the lives of the children [that Pennsylvania is] responsible for educating.”²⁰³ The *William Penn* decision is the first step in ensuring that a more equitable public school funding system is implemented, and that the systemic, widespread failure of the Commonwealth's funding system is addressed. Now that education is deemed a fundamental right, a duty is placed on the Pennsylvania legislature to correct its education funding. However, with no guidance nor timeline from the courts, it may be years before significant change. The Commonwealth should look toward making temporary but immediate changes to help alleviate the problem as it works toward a more permanent and equitable solution.

¹⁹⁸ 24 PA. CONS. STAT. § 25-2502.55 (2022). The Level-Up supplement was first introduced in 2020–21 to increase state funding for the state's 100 poorest school districts. *See id.*

¹⁹⁹ Napolitano, *supra* note 196.

²⁰⁰ *See supra* Part I.B.

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ Hanna & Graham, *supra* note 3.