

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA ASSOCIATION OF
RURAL AND SMALL SCHOOLS, et. al.,

Petitioners,

v.

THOMAS J. RIDGE, Governor of
the Commonwealth of PA.,
EUGENE W. HICKOK, Secretary
of Education,

Respondents,

and

ASSOCIATION OF SCHOOL DISTRICTS
IN SUPPORT OF EXCELLENCE and
EQUITY, et. al.,

Intervenors.

NO. 11 M.D. 1991

CLASS ACTION

CIVIL ACTION - EQUITY

**BRIEF OF AMICI CURIAE
ASPIRA OF PENNSYLVANIA, INC.
AND OTHER INDIVIDUAL AND ORGANIZATIONAL PARTIES
TO THE PHILADELPHIA SCHOOL FINANCE CASE
AND THE PHILADELPHIA SCHOOL DESEGREGATION CASE,
IN SUPPORT OF PLAINTIFFS HERE**

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June 27, 1997

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INTEREST OF AMICI

Amici are plaintiffs in Marrero et al. v. Commonwealth of Pennsylvania et al. (Commw. Ct. No. 182 M.D. 1997) (the Philadelphia School Finance Case) and plaintiff-intervenors, in Pennsylvania Human Relations Commission v. School District of Philadelphia, Commonwealth of Pennsylvania et al., Additional Respondents (Commw. Ct. No. 1056 C.D. 1973) (the Philadelphia School Desegregation Case).

Respectively, Amici are twelve school children in the Philadelphia School District and their parents (Yesenia Marrero, Arlene Marrero, Richard Mojica and Christian Mojica, by and with their mother, Yollie Tabales; Katheryn, Christine, William and Stephen Nolan, by and with their father, William H. Nolan; Jeanene and Larry Little, by and with their mother, Karen H. Little; David and Zachary Maas, by and with their parents, Peter Maas and Lesley Carson; and Aspira of Pennsylvania, Inc. and the Philadelphia Branch, NAACP and Aspira of Pennsylvania, Inc., Citizens Committee on Public Education, Fellowship Commission, Parents Union for Public Schools, Philadelphia Association of School Administrators, (Brotherhood of Teamsters Local No. 504), Philadelphia Home and School Council, American Jewish Committee, Philadelphia Chapter; Jewish Human Relations Council, and East Mount Airy Neighbors.

Each of the organizations are Pennsylvania not-for-profit corporations, but for the Philadelphia Association of School Administrators which is a labor association under state law. All are membership organizations whose members are parents and family members of Philadelphia public school children, as well as tax payers of the Philadelphia School District, the City of Philadelphia and the Commonwealth of Pennsylvania.

Philadelphia Association of School Administrators' members are also principals and vice-principals in the Philadelphia School District. Aspira of Pennsylvania, Inc.'s membership also includes parents and family members of public school children in other school districts in the Commonwealth, chiefly in the Commonwealth's

urban districts such as Allentown, Bethlehem, Reading, Lancaster and York.

All of Amici have an interest in the challenge here to Pennsylvania's current school funding formulas and in the judgment and declarations sought by Plaintiffs here.

The Philadelphia School Finance Case to which some Amici are parties plaintiff, along with the City of Philadelphia and the School District of Philadelphia, is pending in Commonwealth Court. The Philadelphia School Desegregation Case to which the remaining Amici are parties, Aspira of Pennsylvania, Inc. being a party in both cases, and wherein the Commonwealth Court's Findings of Fact, Conclusions of Law, and Opinion was entered August 20, 1996, is pending on King's Bench in the Pennsylvania Supreme Court.

ARGUMENT

Amici Aspira et. al. write briefly to set forth the two standards which Amici believe to be embodied in the Education Clause of the Pennsylvania Constitution, Article III, Section 14, each of which, independently, require, Amici respectfully submit, that Pennsylvania's current schema for state financing of the Commonwealth's public schools be declared unconstitutional.

The first standard -- earliest articulated in our Constitutional history and subsumed in each subsequent constitutional articulation -- is that the schools must be so financed as to provide for the effective education of poor children. The second -- increasingly explicit in its fundamental

law as Pennsylvania undertook to make public education systematic in fact, and thorough and efficient -- is that the state must so finance its¹ public schools that poor school districts are able, with equalizing state assistance, to extend to children the same effective education as are wealthy districts.

Either standard is sufficient to invalidate Pennsylvania's current school finance schema and on the record before the Court each standard has been violated. Together the two standards

¹Throughout Pennsylvania's history, education has been a state function; the schools have been regarded as the state's schools and school districts and boards as agents of the state. Compare, Board of Public Education of the First School District of Pennsylvania v. Ransley, 209 Pa. 51, 53-4, 58 A. 122, 123 (Pa. 1904) where the Supreme Court wrote:

"...A review of constitutional provisions and legislative enactments clearly shows that the state has regarded the education of its children as one of its duties and functions, the performance of which it has as yet delegated to no municipality. Though by the act of 1854 every township, borough and city of the Commonwealth is made a separate school district, its affairs are not managed by the township or municipal authorities, but by boards of school directors or controllers elected for that purpose. 'School districts, as quasi corporations belonging to the public school system, have no necessary connection with municipal government:' Ayars's Appeal, 122 Pa. 266. 'School directors are by no means municipal officers. They are not invested with any of the municipal powers, nor are they charged with the performance of municipal functions:' Chalfant v. Edwards et al., 173 Pa. 246." (emphasis supplied)

with In re Georges Township School Directors, 286 Pa. 129, 134-35; 133 A.223 (1926), and with Philadelphia Federation of Teachers v. School District of Philadelphia, 506 Pa. 200, 484 A.2d 751, 753-54 (Pa. 1984). See also, Brown v. Board of Education, 347 U.S. 483, 493 (1954) ("Today, education is perhaps the most important function of state and local governments....Such an opportunity, where the State has undertaken to provide it, is a right which must be made available to all on equal terms").

require that the Court, in articulating the parameters which a funding schema must meet in order to pass Constitutional muster, declare that the Education Clause of the Pennsylvania Constitution requires both that state school finance schema must equalize school expenditures of poor districts with those made by wealthy districts and that such schema must yield sufficient additional support to districts with large numbers and proportions of poor children so that such districts can actually provide an equally effective education as that provided by wealthy districts, to the Constitutionally-favored beneficiaries of Pennsylvania's Education Clause, namely, the poor children of the Commonwealth.²

This case comes to the Court for decision in light of the Pennsylvania Supreme Court's declaration in School District of Wilkinsburg v. Wilkinsburg Education Association, 542 Pa. 335, 343; 667 A.2d 5, 9 (Pa. 1995) that "public education in Pennsylvania is a fundamental right" and that the Court "has consistently examined

²Just such declarations and guidance to the New Jersey General Assembly for its formation of Constitutionally adequate school finance schema was entered by the Supreme Court of the State of New Jersey in its Opinion and Orders of May 14, 1997 in Abbott v. Burke, (M-662-96) -- but only after twenty-five years of litigation there and despite the absence in New Jersey's Constitutional history of the express Constitutional provisions and explicit statements of Constitutional intent which pervade Pennsylvania's Constitutional history, set forth infra in this Brief. Neither New Jersey nor any of the other thirteen original states had early Constitutional provisions like those of Pennsylvania, set forth infra.

The Abbott Court analyzed the Constitutional violations found there both in terms of differential expenditures by districts with many poor children, Slip Opinion supra at pp. 8 & n.3 ("socioeconomic status"), and in terms of differential expenditures by poor districts versus wealthy districts, Slip Opinion supra at p. 15 ("property-poor and property-rich districts").

problems related to schools in the context of that fundamental right."³

The source of this fundamental right is Article III, Section 14 of the Pennsylvania Constitution which commands:

"The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth." (emphasis supplied.)

Both of the standards embodied in Article III, Section 14, each of which is determinative here -- the especial purpose effectively to educate poor children, and state responsibility thoroughly to support that education -- have been, since the origin of the Commonwealth, express in Pennsylvania's fundamental law.

³Thus, in addition to the heightened scrutiny required of any challenged state statute which touches the fundamental right of a public education, this case implicates also Article 1, § 1, the first Section of the Declaration of Rights of the Pennsylvania Constitution, originally adopted in 1776 and entitled "Inherent rights of mankind", which provides that:

"All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness".

as well as Article 1 § 26, the Equality Clause of the Constitution, adopted in 1967, which provides that:

"Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right."

William Penn's Charter of Liberties, Section 12 (1682)

commanded:

"the governor and Provincial Council
shall erect and order all publick schools."

In these schools, William Penn's Laws Agreed Upon In England,
Section 28 (1662) directed -- with a verisimilitudinous
appreciation of the contingency of poverty and riches not
frequently sounded in our times -- that:

"all children...shall be taught some useful
trade or skill, to the end that none may be
idle, but the poor may work to live, and the
rich, if they become poor, may not want."

William Penn's 1707 School Grant declared:

"The prosperity and welfare of any people depends
in a great measure upon the good education of youth
and their early instruction in the principles of
true religion and virtue"

It commissioned:

"a public school ... where poor children of both
sexes may be taught and instructed in reading,
writing, working, and other good and useful
literature and maintained gratis, and the children
and servants of the rich may be taught and
instructed at reasonable rates."

"Penn's is apparently the first use of the phrase "publick
schools" in an official paper or discourse, in England or here.
See Lawrence A. Cremin, American Education: The Colonial
Experience, 1607-1783, (Harper & Row 1970). The Charter of
Liberties, Section 13, expressly assigned the education function,
the only one among the many functions of the new colony's
government which was particularly assigned by the Charter itself,
to the "Committee of Manners, Education and Arts". Now still,
Article IV, Sections 1 and 8 of the Pennsylvania Constitution make
Secretary of Education the only Constitutionally-mandated Office in
a Governor's Cabinet.

Pennsylvania's 1776 Constitution, at Article III, Section the Forty-fourth, directed that:

"A school or schools shall be established in each county by the legislature, for the convenient instruction of youth, with such salaries, to the masters paid by the public, as may enable them to instruct youth at low prices."

Pennsylvania's 1790 Constitution at Article VII, Section 1 directed that:

"The legislature shall ... provide for the establishment of schools throughout the state, in such manner that the poor may be taught gratis."

Pennsylvania's 1838 Constitution in the same terms provided at Article VII, Section 1 that:

"The legislature shall... provide by law for establishment of schools throughout the State, in such manner that the poor may be taught gratis."

In 1834, Pennsylvania by its Free Public Schools Act of 1834 became the first state in the nation (five years before Horace Mann and the Commonwealth of Massachusetts) to adopt a common schools act. A year later, faced with a taxpayer's revolt⁵, the nation's first common schools act was saved from repeal by Thaddeus Stevens -- then a tyro member of the State House of Representatives; three decades later, leader of the Radical Republicans, Majority Whip of the United States House of Representatives, and primary progenitor of the Fourteenth Amendment to the United States Constitution and

⁵Woodley, infra at 110, reports "Leading reasons for objection...were the extra taxes that would be necessarily incurred; ...and, unsound as it may seem today, that it would force the whole group to pay for instruction to benefit those who had children in schools."

its Equal Protection Clause⁶ -- in a speech marked by historians as "second to that of no speech ever delivered in an American legislative assembly."⁷ The Pennsylvania Senate had already voted to repeal; it filed into the House to hear Stevens' address, and at its conclusion, filed back to repeal the repealer. Stevens put plainly the fundamental purposes of the schools:

"Sir, I trust that when we come to act on this question, we shall...so cast our votes ...that the blessing of education shall be conferred on every son of Pennsylvania -- shall be carried home to the poorest child of the poorest inhabitants of the meanest hut of your mountains⁸, so that even he may be prepared to act well his part in this land of free men, and lay on earth a broad and solid foundation for the enduring knowledge which goes on increasing through eternity."⁹

The 1837 Constitutional Convention narrowly sustained the 1790 Constitutional language and commanded again, in Article VII, Section 1 of Pennsylvania's 1838 Constitution, that:

"The legislature shall... provide by law for the establishment of schools throughout

⁶Eric Foner, Reconstruction: America's Unfinished Revolution, 1863-1877, 228-233, 253, 254-55 (Harper and Row, 1988).

⁷Korngold, infra at 34.

⁸That was then where poor children were. Philadelphia was then a rich city, and it unlike most of the Commonwealth had opened public schools. Now poor children are largely in the cities throughout the state -- 44% of all the Commonwealth's poor children are in the City of Philadelphia School District itself; 73% of the Philadelphia School District's students are poor children.

⁹Steven's Address of April 11, 1835 including the quoted part is set forth and commented upon in T.L. Woodley, The Great Leveler: The Life of Thaddeus Stevens, 110-123 (Books for Libraries Press 1937), F. M. Brodie, Thaddeus Stevens, The Scourge of the South, (W.W. Norton 1959), R. Korngold, Thaddeus Stevens: A Being Darkly Wise and Rudely Great, 33-39 (Greenwood Press 1974).

the State, in such manner that the poor may be taught gratis."

Those in the 1837 Constitutional Convention, including Thaddeus Stevens, who opposed that language judged that "no distinction of classes should be made, because it has been found not to produce the effect intended by it." (Mr. Sill at 251, Proceedings and Debates of Convention of the Commonwealth to Prepare Amendments to the Constitution, Volume 5 (1838)). "It set a mark on the poor" (Mr. Porter at 290). "There were hundreds of thousands of parents ... who from some feeling, were unwilling ... to send their children to school as paupers." "It did not suit the spirit of the people, to be divided into classes, one portion to be considered poor and another portion rich." (Messrs. Porter, Thaddeus Stevens, Smyth, at 294-300, 358).

Instead, they urged that the Constitution should say that:

"the Legislature shall ... provide ... for the establishment of schools throughout the state, in such manner that all children may be taught at public expense." Id. at 183.

Supporters of changed language wanted to see "the words which cast the reproach of poverty in the teeth of the children, and which connects with their earliest education, a deep sense of arbitrary distinction in society, erased from our fundamental law." (Fleming at 356).

But, important here, far from discounting the Constitutional commitment to poor children, proponents saw the "all children" language as "something which was equivalent." (Sill at 345-46).

"The phrase included all the poor. [T]he provision ... amounted to a strong recommendation to the legislature ... that it should adopt a system that would introduce a practical equality in all our schools....In this way all are put upon a footing of equality and all pay for all in proportion to their means." (Porter at 358).

In just this spirit¹⁰, the 1873 Constitutional convention, subsuming and strengthening the focal purpose of Pennsylvania's Education Clause effectively to educate poor children, did so change the Constitutional language, to:

"The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public schools, wherein all the children of this Commonwealth above the age of six years may be educated, and shall appropriate at least one million dollars each year for that purpose." (Article X, Section 1 (1874)).

Proponents of the language change emphasized, just as the 1838 proponents had, that "all the children of this Commonwealth" embodies a special focus on poor children. This intention and understanding was frequently, and eloquently, stated by the proponents in the 1873 Constitutional Debates. For example:

"If it be necessary that the State shall

¹⁰Although Thaddeus Stevens, "the father of the common schools system", T.F. Woodley supra at 110, had died in the Summer of 1868, the 1873 Convention was led by the Radical Republicans whom he had led for so long and the Constitution framed by the 1873 Convention embodied their ideas of the relation between government and people and among state government, children and schools. See David Montgomery (then a teacher at the University of Pittsburgh), Beyond Equality, Labor and the Radical Republicans: 1862 to 1872 (University of Illinois Press 1967), and his "Radical Republicanism in Pennsylvania", Pennsylvania Magazine of History and Biography, Vol. 85 (October 1971), pp. 439-57. Cf. E. Foner, supra at 452.

see to the education of the children of the State at large, it is imperatively necessary that the effort of the State in that direction should be directed to those that most require it; that is, to the poor, the neglected and the abandoned. (Mr. Carter, Proceedings and Debates of Convention of the Commonwealth to Prepare Amendments to the Constitution, Volume VI at 48 (1873)).

"The object of the committee, in introducing this section, was to provide for the education of a class of children of whom we all know there are but too many existing among us, children without parents, without protectors, without any means of education or of support. (Mr. Darlington at 471, Volume II).

Supporters of the amendment were explicit that equality in the schools necessitated special attention to the educational needs of poor children and that "if more attention were given to them, and more money spent to educate that class of the community...it would be a great thing for the future for the State of Pennsylvania". (Mr. Knight at 46, Volume VI).

The 1874 Constitution, in addition, transits from the early Constitutional commands to "provide for the establishment of schools" to the Constitutional command to the General Assembly, still now binding, to "provide for the maintenance and support of a thorough and efficient system of public education." Not for the maintenance of systems of public schools, but for the maintenance by the General Assembly, and its support, of "a...system" -- a single system, which single system shall be thorough and efficient. A

single system, thorough and efficient, "wherein all the children of this Commonwealth...may be educated."¹¹

¹¹This analysis is not to put aside the compelling argument made by Plaintiffs here that the meaning of "thorough and efficient" in the Constitutional command "to provide for the maintenance and support of a thorough and efficient system of public schools, wherein all the children of this Commonwealth...may be educated" requires that current schema for funding the schools be declared unconstitutional. It does. And Amici fully adopt Plaintiff's argument at pp. 5-95 (as well as their equal protection argument at pp. 95 ff.) of their Brief and incorporate it here as if fully set forth herein.

But even if "thorough and efficient" were not articulated in the Constitutional command, the Constitutional requirement that the General Assembly provide for the maintenance and support of "a...system of public schools wherein all the children of the Commonwealth...may be educated" would -- and does -- independently compel the same result, i.e., a single system, Commonwealth-wide equally capable, and effective, throughout the single system, in educating all of the Commonwealth's children; not dual systems or even more fractionated and still more numerous systems varying enormously and crucially in their capacities effectively to educate the Commonwealth's children.

The very word "system", newfound in the then-dawning machine age, conveyed the meaning of an integrated, although large and multi-faceted, mechanism distributing the internal load evenly and yielding a concentration or a vector of productive force -- finance equalized throughout the system, by state force, and yielding the effective education of all children, the productivity of the yield tested especially by the effective education of poor children. Cf. The Works of Henry Adams.

It is this Constitutionally-embodied premise which, Amici believe, is embraced in the now sitting Governor's thoughtfully written, at least twice restudied and reissued, Statement in The Ridge Education Plan at p.9 (revised ed. September 1, 1994) that:

"The future of Pennsylvania depends on the quality of educational opportunities we offer all of Pennsylvania's students, regardless of where they live. As governor, I am committed to ensuring that every Pennsylvania child has an equal opportunity to learn and prepare themselves to be productive members of our Commonwealth." (emphasis supplied)

The 1874 Education Clause also for the first time incorporated the school finance command. Indeed, "[t]he most important task before the 1873 convention in framing the education article", Mahlon H. Hellerich writes in the authoritative The Pennsylvania Constitution of 1873: A Dissertation In History at 388 (1957), "was to provide a broader foundation for the expanding system of public schools." It did so, Hellerich concludes, by providing that "the legislature has to assume the responsibility of equalizing the burden of supporting public schools by making appropriations to the poorer districts." Id. at 896. Exactly that is what the Education Clause of the 1873 Constitution -- which stands today unchanged in any relevant particular, and binds here -- did.

Lest a Constitution reader should miss it from the plain words of the Clause that "the General Assembly shall provide for the...support and maintenance of a...system of public schools...", the commanding duty is to provide for the support of a system of public schools, which is to be an "efficient" system, a word which in the industrializing 1870s was newly a word of finance and economics, and which is a "thorough" one, a measure both of the system and of the support. Should it still be missed, the Clause specified that "the General Assembly shall appropriate at least one million dollars each year for that purpose" -- an emphatic expression of the state's obligation to finance a system which would yield an effective education, equally, to all, put, in 1873, in terms of an appropriation of at least one million dollars for

very practical reasons, as will appear from the Debates of the framers of the Clause.

At the central point in the formulation of the Education Clause by the 1873 Constitutional Convention, and defending its express requirement of a minimum appropriation, one of the principal proponents of the Clause as adopted -- in a statement whose plain clarity, precision and penetrating character, determinative here, is 'second to none in the history of American constitutional assemblies' -- spoke to its intent and meaning in compelling terms.¹² Mr. Beebe said:

"[W]e have a Constitution that requires a system of public schools for the benefit of the poor at the expense of the State; but so far as its maintenance at the public expense equally by public appropriations is concerned, it has been a farce.

He explained:

"The appropriations made by the Legislature heretofore in many instances have never exceeded from seven to ten or eleven dollars to a sub-school district, or in other words the appropriation has amounted to the paltry sum of from thirty to seventy cents per scholar, instead of the intention of the Constitution being realized that the property of the State should educate the children of the State by equalizing taxation thereon.

Identifying exactly the evil the new Education Clause was framed to overcome, Beebe said:

"The result has been that in the poorer districts or portions thereof, of this State, the maximum tax would not keep up the public schools for the four months required by law; and that is perhaps why

¹²Abbott and the decisions of the other state Supreme Courts which have entered the judgment and declarations sought here did so without the benefit of any such clearly decisive expressions of the intentions of the framers of their state's Education Clause and its meaning.

this clause is inserted here; at least it is a reason why it should be here[.]

Why should it be here? Beebe was precise and pointed:

"[S]o that we shall not make a farce of our public school system by ordaining in the Constitution that we shall have public school and then force the poorer counties to assess the maximum of tax authorized by law to support a four months' school, whereas, in the wealthier counties in the State a tax of two mills would be all that it would be requisite for them to have far better schools and for a longer term. The failure of the Legislature to make such appropriations as would equalize the burdens of supporting the system is therefore, I take it, a reason why this proportion is inserted."

Debates of the Convention to Amend the Constitution of Pennsylvania, Vol. VII, 679 (1873). (For the convenience of the Court, Amici will forward a copy of the entire Debate on the Education Clause during the 1873 Constitution Convention, in Volumes II, VI and VII).

Mr. Stanton of Philadelphia bespoke the benefits to be secured to all the citizenry of the Commonwealth from this Constitutionally imposed and Commonwealth-wide responsibility of the state itself financially to support and to maintain the public schools in poor districts by equalizing their resources, and he re-iterated the bite of the 1874 Education Clause:

"While Philadelphia would not be benefited at all by the million dollars, while perhaps it might be to the disadvantage of our city taxpayers in a direct pecuniary view,¹³ still we are glad to have the opportunity to pay our taxes into the public treasury for the purpose of spreading education throughout the State, and especially in some of the

¹³From the vantage point of 1997, and the reversal of fortune for what in 1873 was tax-rich Philadelphia, there is unintended irony in Mr. Stanton's remarks.

now neglected districts in the west and northwest. They can receive a great advantage from it while we shall not, but we are glad, and every taxpayer in Philadelphia will be glad, to have the honor to contribute to it.

"I cannot see why the [other] gentleman from Philadelphia (Mr. Hanna) should oppose it. It will put money into some districts where they cannot raise among themselves the requisite amount to educate their children.

"I hope, sir, the clause will not be stricken out." (Vol. VII at 680).

The 1873 Convention also rejected a proposal to establish separate poverty-segregated "industrial schools" for poor children, on the ground that:

"You cannot take the favored children of a ward in Philadelphia and put them into one school and the poor and unfortunate into another school and give them the advantages that the system of education is intended to accomplish. All this separation and distinction of children is against the unfavored class" Vol. VI at 45-46 (Mr. Mann).

and that:

"[I]t certainly is a multiplication of words and of sections, first to provide that the Legislature shall establish common schools throughout this State, wherein all the children may be educated, and then go on to single out a particular class. The first section includes all the children, every child of the Commonwealth, no matter what its condition rich or poor." Vol. VI at 45 (Mr. Mann).

See also, Debates, vol. II at 470 ff. (1873).

Thus at every point in the 1873 Debates the framers of the "modern" Education Clause were forcefully explicit as to the conditions this Constitution would prohibit and render unconstitutional. They were, as the reader has quickly recognized, exactly

the conditions which now prevail for poor children and for poor districts and for relief from which Plaintiffs here seek this Court's, and the Constitution's, judgment.

The long and purposely plain sweep of the Education Clause's constitutional history shows the intention, and the Constitutional requirement, that the education of poor children be "something which is equivalent", that "a system be adopted that would introduce a practical equality in all our schools", that "the property of the State should educate the children of the State by equalizing taxation thereon", and that "we shall not make a farce of our public school system by ordaining in the Constitution that we shall have public school and then force the poorer counties to assess the maximum of tax for a shorter school year, whereas, in the wealthier counties a lesser tax would be all that would be requisite for them to have far better schools and for a longer term." The Education Clause prohibits "the failure of the Legislature to make such appropriations as would equalize the burdens of supporting the system". The Constitution requires that this Court so declare and that relief ensue.

The 1967 Amendment of the Education Clause -- adopted not by the 1967 Constitutional Convention, but by the alternative process of initiation by adoption in two successive General Assemblies and ratification by the people -- in no way alters the plain duties which the Education Clause of the Constitution imposes. The Education Clause now reads:

"The General Assembly shall provide for the maintenance and support of a thorough and

efficient system of public education to serve the needs of the Commonwealth."

Thus articulated, the Clause subsumes the obligations -- the standards and the principles -- imposed by Pennsylvania's prior Constitutional articulations. It is a single system of public education, Commonwealth-wide, effectively educating all of the children of the Commonwealth, including especially poor children and children in poor districts, that must be maintained. The Commonwealth itself, by its General Assembly, must support and maintain such a system including by equalizing state appropriations (1873's minimum one million dollar appropriation had become an anachronism, as had the limitation of age six in a state, only one of three, which in 1959 had authorized age 5 and age 4 kindergarten, see 24 P.S. § 5-503), such that all of the Commonwealth's children, including especially its poor children, may equally benefit and be thoroughly and efficiently educated. Nothing less would "serve the needs of the Commonwealth".

In an unbroken line of cases, the Pennsylvania Supreme Court has consistently construed the Education Clause of Pennsylvania's Constitution to embody the standards set out above, which Constitutional standards, Amici submit, are determinative in this case:

In McLeod v. Central Normal School Association, 152 Pa. 575, 578; 25 A. 1109 (1893), for example, the Supreme Court declared:

"[T]he Constitution, from the earliest years of our national independence, imposed upon the legislature the duty or providing by law for the establishment and maintenance of schools for the education of children throughout the Commonwealth and especially the children of the poor."

In In re Rule upon G.S. Walker, 179 Pa. 24, 28-29; 36 A. 148 (1897), the Supreme Court said:

"The advantages of the system for many years were far from uniform. In one district would be found excellent teachers, ample and comfortable school rooms, with suitable school apparatus, and a term of eight to ten months. In another district perhaps in the same county, would be found incapable teachers, rude and insufficient buildings, not supplied with any of the aids to teaching, such as globes, blackboards, and other school furniture, with a term of four months. The act of 1854 was intended to raise the character of the schools and stimulate uniformity; and all the legislation since that time has been for the promotion of the same end. Prior to 1874 the state appropriations for school purposes were comparatively small. Nearly the whole fund for building and school purposes was raised by local taxation in the respective districts.

"But in the constitution of 1874, section 1 of article X, directed that: "The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public schools, wherein all the children of this commonwealth above the age of six years may be educated, and shall appropriate at least \$1,000,000 each year for that purpose."

"The school system had then been in operation forty years, yet statistics demonstrated that a large percentage of even Pennsylvania-born children grown to manhood and womanhood under the public school system were illiterate."

"The school laws as administered had not accomplished nearly to the full extent the purpose of its orders. Hence the mandate of the new constitution. The implication is the fund raised by local taxation has not been sufficient; it must be liberally supplemented by state aid. The legislature has not limited the appropriations to the amount prescribed by the constitution. At the last session \$5,500,000 were appropriated for common schools alone, to be apportioned among all the districts for the years 1895 and 1896."

"The object of these large appropriations was to add to the efficiency of the schools. It was not intended by increasing this efficiency to thereby wholly impose the increased expense on the districts to be raised by local taxation, and it is just as clear it was not intended the school districts should shift the burden to the state by largely reducing local taxation. If that were the result, nothing would be...gained in efficiency".

In Board of Public Education of the First School District of

Pennsylvania v. Ransley, 209 Pa. 51, 53; 58 A. 122 (1904):

"By the constitution of 1790 the people of this commonwealth imposed upon the legislature the positive duty of establishing schools throughout the state for the free education of the poor. The constitutional provision was: 'The Legislature shall, as soon as conveniently may be, provide, by law, for the establishment of schools through the state, in such manner that the poor may be taught gratis.'

"In carrying out this mandatory direction, the Act of March 3, 1818, P.L. 124, was passed, entitled 'An Act to provide for the education of children at public expense within the city and county of Philadelphia.' With constantly increasing interest in the education of the young, the legislature, in reflecting public sentiment, from time to time provided for public schools, created school districts, and, finally, by the Act of May 8, 1854, P.L. 617, established a system of common school education for all the counties of the commonwealth."

"What was first a constitutional requirement, that the legislature should establish schools for the education of the poor 'gratis,' in time began a universal demand for free education for all classes, and, for years, to thousands of the children of the rich as well as the poor, common schools have been the only colleges."

"By our present constitution the legislature is to provide for the education of all the children of the commonwealth through 'a thorough and efficient system of public schools.'"

By Act of August 8, 1963 -- simultaneous with the initiation of the 1967 Amendment -- the General Assembly itself explicitly stated its own understanding of the duties imposed upon it by the Education Clause of the Constitution. That understanding coincides with that set forth in this Brief. In the Act, the School Reorganization Act of 1963, codified at 24 P.S. § 2-290 & ff., the Assembly declared (unfortunately all in one paragraph):

"The purpose of this subdivision is to provide a flexible framework and effective and orderly means whereby the administrative units of the Commonwealth's public school system can be expeditiously reorganized. While deeply impressed with the continuous dedicated responsibility exercised over the last century by the citizenry through their local boards of school directors, the General Assembly must also be cognizant of the responsibility placed upon it by Article X, Section 1 of the Constitution of Pennsylvania which requires in part, that "The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public schools, wherein all the children of the Commonwealth above the age of six years may be educated...". As the evidence demonstrates beyond reasonable dispute that the present administrative system of more than two thousand (2,000) school districts is incapable of providing adequate education and appropriate training for all of the children of the Commonwealth above the age of six, the General Assembly hereby renews its dedication to its responsibility of providing a thorough and efficient system of public schools within the Commonwealth. It is hereby declared to be the purpose and intention of the General Assembly to establish the procedures and provide for the standards and criteria under which school directors and district administrators and county boards of school directors and county administrators shall have the power and bear the duty of determining the appropriate administrative units to be created in each county to carry out the responsibilities shared by them and the General Assembly, of educating and training each child within his capacity to the extent demanded by the immediate requirements of growth and strengthening of this Commonwealth and nation. Local school officials as agents of the General Assembly are directed to continually review organizational patterns and adopt without delay all changes which will accelerate the progress of public education." Id. at § 2-290.

The 1963 Act, at 24 P.S. § 290.1, commissioned and required the Commonwealth to "measure objectively" and, with "relevant comparative data", "readily to appraise" and "to provide a uniform

evaluation" of the educational performance of each and all of the Commonwealth's schools and districts.

In so doing, the General Assembly further declared its understanding of its own Constitutional obligations, namely, to act to assure "the adequacy and efficiency of the educational programs offered by the public schools of the Commonwealth", and to assure that its "agents", the schools and districts, should "effectuate without delay the strengthening of the districts' educational programs". The express point of the General Assembly School Reorganization Act was to assure "the capability of providing a comprehensive program of education". Id. at § 2-291.

Here, the same "capability", or not, actually to provide "a comprehensive program of education" -- the core value of the Education Clause -- is also at stake, not as it may be effected by the General Assembly's organization of the schools but as it is effected by their finance. There, the General Assembly itself recognized, and acted upon, its Constitutional Education Clause duty. Here, the General Assembly even though it has recognized its Constitutional responsibility for the capabilities of its districts has -- with respect to the districts' financial capabilities -- failed to act upon it. True to the Constitution, this Court must hold the Commonwealth to its responsibility.

Finally, the signal decision of the Pennsylvania Supreme Court in School District of Wilkinsburg v. Wilkinsburg Education Association, 542 Pa. 335, 343; 667 A.2d 5, 9 (Pa. 1995) with which this Amicus Brief opened is in the unbroken line of cases, recited

in part above, establishing a constant and continuing understanding of the Constitution's Equality Clause. The Wilkinsburg Court wrote:

"The maintenance of a public school system is primarily for the education and training of our youth and the incidental financial benefit of those participating therein is of secondary concern....The polestar in any decision requiring the assignment of priorities of resources available for education must be the best interests of the student....Any interpretation of legislative pronouncements relating to public education must be reviewed in context with the General Assembly's responsibility to provide for a 'thorough and efficient system' for the benefit of our youth."

Having declared that public education is a fundamental right, the Wilkinsburg Opinions are instructive also in two further ways, one, as to the strength and Constitutional power of this fundamental right of public education and second, as to the measures by which Courts must steer, the very measures established by 24 P.S. 290.1 in determining whether some children have, in fact, not been provided "a thorough and efficient public education", the predicate of finding an action or inaction of the state (here, the current school finance schema) to be unconstitutional.

As to the first, in Wilkinsburg even while acknowledging that "the majority is guided by the laudable intention of assuring that the children of the Turner School receive an educational opportunity equal to that of their peers in other parts of the Commonwealth", then Chief Justice Nix dissented with a persuasive review of the school code which found that the General Assembly had

not authorized its agent, Wilkinsburg School Board, to contract out the school's teaching function and has likely prohibited it. Id. at 10-12. The majority takes no issue with that finding, but holds, that even if that is so, the overriding Constitutional command that all of the Commonwealth's school children must actually be provided an effective education is so fundamental and its imperative is so strong and powerful that the absence of authorization, and even school code prohibition, of such contracting out is overcome by the Constitutional command itself, which would render any such prohibition unconstitutional. Id. at 9. The same strength of Constitutional command should determine the result here as well.

Second, the "ghastly results" (Nix. C.S., Id. at 12) of non-education by the Wilkinsburg School District, so far from satisfying the Constitution's imperative effectively, thoroughly and efficiently to educate all of Pennsylvania's children as to trigger severe constitutional review and judgment are matched in ghastliness by "educational" results by those poor districts and poor children which are in evidence in this case. Compare the Wilkinsburg results on grades, SATs and standardized tests, Id. at 8, with the record here.

In 1994-95 on the state's own measure (24 P.S. § 290.1) of school and district educational performance, The Pennsylvania System of School Assessment, 1994-95 School-By-School Results, (PDE, Dec. 1996), the scores of the single worst performing school in Wilkinsburg showed more than 50% of the fifth grade students in

the lowest quartile in reading and 64%, in the lowest quartile in mathematics. Id. at 10. In Philadelphia School District in 128 elementary schools, 50% or more of 5th graders scored in the lowest quartile in reading and in 94 elementary schools, 64% or more scored in the lowest quartile in mathematics. All of these are high-poverty schools. Id. at 81-86.

In Philadelphia School District, more than 73% of the students are poor children, 44% of all the Commonwealth's poor children. Its per child expenditure is well below the state median, and even while Philadelphia's tax rate is significantly higher than the 61 suburban districts which surround it, it is able to expend only \$1,926 less per child than the average per student expenditure of these 61 suburban districts -- some \$4,102 less per child than the ten highest spending districts among the 61.¹⁴

Embedded both in the Constitution's Education Clause and in the General Assembly's 24 P.S. § 290 & ff. is an implicit finding or presumption, irrebuttable, that students who actually are provided a thorough and efficient public education, including especially poor children, will learn and learn to high standards. As a matter of law, therefore, it might be irrelevant and objectionable to ask if that is actually true. Since, however, the burden on a Court asked to declare a statute unconstitutional is

¹⁴The sources of the data on poor children, and on per student expenditure are PDE, Pupil Characteristics, AFDC and School Lunch Membership, School Year 1994-95 (1996) and PDE, Total Expenditures Per ADM, School Year 1994-95 (May 1996). The data is set forth and the calculations are made in Aspira Exhibit No. 1A and City of Philadelphia Exhibit No. 107 in the trial of the Philadelphia School Desegregation Case (Summer 1996).

considerable, it would be fair for a Court to want to be reasonably confident that should it enter the declarations requested and should the General Assembly enact funding schema which meet constitutional standards, the Constitutional purpose will actually be achieved, here the effective education of Pennsylvania's poor children and her children in poor districts.

Briefly, Amici submit, this Honorable Court can reasonably have that confidence, on the following grounds. The school and teaching variables which actually affect learning and school achievement, including especially by poor children, are now well identified. When these variables are provided in a school or district, then, systematic study of extensive experience in the schools shows, from their track record, that all children, including especially poor children in high-poverty urban and rural districts, can and do learn, to at least grade level mastery. See e.g., Carnegie Corporation, Years of Promise, A Comprehensive Learning Strategy for America's Children, (1997); Richard Elmore and Deanna Burney, Staff Development and Instructional Improvement (National Commission on Teaching and America's Future, Teachers College, Columbia University 1996); S. Stringfield and A. Winfield, Urban and Suburban/Rural Special Strategies for Educating Disadvantaged Children; First Year Report, (a national evaluation of what works for poor children, prepared at John Hopkins University for the Office of the Under Secretary, U.S. Dept. of Education) (1994) (four subsequent Reports are pending publication); and Samuel C. Stringfield and Rebecca Herman,

Promising Programs for Educating All Children (Monograph, Education Research Services, Arlington, VA, 1997).

Three of the hard goods variables -- the implementation of each of which costs money and each of which is invariably present in wealthy, high-expenditure, high-performing districts but not in poor districts or high-poverty districts -- are small class size, developmentally strong early childhood education, and the adoption and rigorous implementation of any of many demonstratedly effective systems of instruction.

As to class size, See B.A. Nye, J. Boyd-Zaharias, et. al., "Smaller Class Really Are Better", The American School Board Journal 31-33 (1992) (summary of large-scale, state-wide ten year Tennessee undertaking showing very large learning gains for poor children from small class sizes) and Frederick Mosteller, "The Tennessee Study of Class Size in Early School Grades", The Future of Children, Vol. 5, No. 2 (Summer/Fall 1995). The record here speaks to the class size and shows large differentials, poor districts - wealthy districts, poor children -- non-poor children, in class size. A study of the wealthiest 36 of the 61 suburban Philadelphia districts, conducted for plaintiff-intervenors in the Philadelphia School Desegregation Case, showed that the 36 wealthiest suburban districts had an average class size of 20.5 students in grades one and two. Philadelphia's class sizes in grades one and two are 31.

As to early childhood education, see, e.g., L.J. Schweinhart, et. al., Significant Benefits: The High/Scope Preschool Study

Through Age 27 (High/Scope Press, Ypsilanti, Michigan 1993) (the most recent in a series of longitudinal studies showing large immediate learning gains and long-term gains in life situation from instructionally strong pre-school and kindergarten education for poor children). Again, the differentials, poor districts - wealthy districts, poor children - non-poor children are of record here and are vast. (Not only do many poor districts with high numbers of poor children not have universal full day kindergarten at age five, but waiting lists instead, they also have no age 4 kindergarten while the children of non-poor families from their resources invariably secure several high-quality years of early childhood education, kindergarten and before, a differential which Abbott holds poor districts must be financed to overcome.

As to demonstratedly effective systems of instruction, four examples: Maria Montessori's is the most widely known of the many powerful systematic pedagogues. It was developed and proven for poor children, including many children with disabilities, in Naples and Rome. It is extensively used in the private education of non-poor children, but nearly never used in the public schools to teach poor children.

Success for All is another proven and powerful system of instruction, successfully used in more than 360 high-poverty, mostly urban and some rural, schools to teach reading and mathematics, K-5, to grade level mastery.¹⁵ See, e.g., R. Slavin,

¹⁵See, 24 P.S. § 10-1081 which requires: "...methods of teaching...so that each school shall be equal to the grade for which it was established...". And See, 24 P.S.

N. Madden, et. al., "Success for All: A Summary of Research", Journal of Education for Students Placed At Risk, Vol. 1, pp. 41-76 (Johns Hopkins University 1996).

Core-Knowledge, another proven curriculum for systematic instruction, is based in E.D. Hirsch's Cultural Literacy: What Every American Should Know (1989) and his subsequent six books on kindergarten - grade 5. See, e.g., G.O. Schrubnell, "Hawthorne Elementary School: The Evaluation Perspective", showing that virtually all students, K-5, in an 84% poor San Antonio, Texas school achieved grade level mastery in reading in two years of implementation, and D. Mentzer & T. Shughnessy, "Hawthorn Elementary School: The Teacher's Perspective", both in Journal of Education for Students Placed at Risk, Vol. 1, pp. 33-40, 13-23 (1996).

High/Scope, a Piaget-based system of instruction for both pre-school, supra, and grades 1-8 is a fourth. See, e.g., U.S. Dept. of Education, Educational Programs That Work: A Catalogue of the National Diffusion Network (22nd edition, 1996).

Each of these powerful, proven systems of instruction and many others for elementary and secondary schools as well (e.g., Advanced Placement courses, Principles of Technology (physics), Bob Moses' Algebra Project, Project SEED (higher mathematics)), cost money; their success depends on rigorous implementation, and that requires special materials and support and training for teachers, in the classroom not merely in workshops, by master practitioners --

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practices much more widely done in high-expenditure, wealthy districts than in poor districts to the benefit of very many non-poor children but very few poor children.

CONCLUSION

For the above stated reasons and for the reasons stated in Plaintiff's Brief here, Amici Aspira of Pennsylvania, Inc., et. al. respectfully request that this Honorable Court declare Pennsylvania's current school finance schema unconstitutional under Article III, Section 14 of the Constitution of the Pennsylvania Commonwealth and that the Court also declare, going forward, that Pennsylvania's Constitution requires any school finance schema to meet both of two Constitutional standards; (1) that the State provide, in fact, for the financial support and the maintenance of equally effective education of the Commonwealth's poor children and (2) that the state so finance its public schools that its poor school districts are able with equalizing state support to provide to children in them an equally effective education as that provided in its wealthy districts, to the benefit of all of the Commonwealth's children -- and indeed of all of her citizens and of the Commonwealth itself -- especially her poor children and her

children who live in poor school districts.

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June 27, 1997

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