IN THE COMMONWEALTH COURT OF PENNSYLVANIA

William Penn School District; Panther Valley School District; The School District of Lancaster; Greater Johnstown School District; Wilkes-Barre Area School District; Shenandoah Valley School District; Sheila Armstrong, parent of S.A., minor; Tracey Hughes, parent of P.M.H., minor; Pennsylvania Association of Rural and Small Schools and The National Association for the Advancement of Colored People-Pennsylvania State Conference, Petitioners	:	
v.	:	No. 587 M.D. 2014
	:	Argued: May 22, 2023
Pennsylvania Department of Education; Kim L. Ward, in her official capacity as President Pro-Tempore of the Pennsylvania Senate; Joanna E. McClinton, in her official capacity as Speaker of the Pennsylvania House of Representatives; Josh Shapiro, in his official capacity as the Governor of the Commonwealth of Pennsylvania; Pennsylvania State Board of Education; and Dr. Khalid N. Mumin, in his official capacity as Acting Secretary of Education, Respondents	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
PRESIDENT JUDGE COHN JUBELIRER **FILED: June 21, 2023**

Presently before the Court is the Joint Application in the Nature of a Motion for Post-Trial Relief (Post-Trial Motion), filed by Respondent Senator Kim L. Ward, President Pro Tempore of the Pennsylvania Senate (Senator Ward), and Intervenor Bryan Cutler, Leader of the Republican Caucus of the Pennsylvania House of Representatives (Leader Cutler) (together, Legislative Respondents).[1] Following a months-long trial, this Court held the Education Clause of the Pennsylvania Constitution, PA. CONST. art. III, § 14, "requires that every student be provided with 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" and that "the right to public education is a fundamental right explicitly and/or implicitly derived from the Pennsylvania Constitution[.]" (Feb. 7, 2023 Opinion (Op.) at 646, 775.) Based upon the evidence presented, this Court concluded Respondents violated the Education Clause and the Equal Protection Clause of the Pennsylvania Constitution, PA. CONST. art III, § 32.

Legislative Respondents filed the timely Post-Trial Motion pursuant to Pennsylvania Rule of Appellate Procedure 106, Pa.R.A.P. 106, and Pennsylvania Rule of Civil Procedure 227.1, Pa.R.Civ.P. 227.1.[2] In the Post-Trial Motion,

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[1] At the time of trial, Leader Cutler was Speaker of the Pennsylvania House of Representatives and, therefore, a respondent in this matter. After his tenure as Speaker of the House, he sought to intervene, which was granted. Senator Ward was substituted as a party-respondent for former President Pro Tempore Jake Corman following trial pursuant to Rule 502(c) of the Pennsylvania Rules of Appellate Procedure, Pa.R.A.P. 502(c). *See* Feb. 7, 2023 Orders.

[2] Rule 106 of the Pennsylvania Rules of Appellate Procedure provides: "Unless otherwise prescribed by these rules the practice and procedure in matters brought before an appellate court within its original jurisdiction shall be in accordance with the appropriate general rules applicable to practice and procedure in the courts of common pleas, so far as they may be applied." Pa.R.A.P. 106. As this matter was brought in the Court's original jurisdiction, we accordingly look to Rule 227.1(a) of the Pennsylvania Rules of Civil Procedure, which states:

Legislative Respondents assert the Court committed 118 errors. In their respective briefs, Legislative Respondents, however, focus on select alleged errors. As a result, Petitioners[3] assert Legislative Respondents have failed to preserve their objections and, therefore, waived the remaining issues. (Petitioners' Brief (Br.) at 5-6.) As this matter is in the Court's original jurisdiction, the Court, in its discretion, declines to find those issues waived as Legislative Respondents incorporated their arguments from their previously filed proposed findings of fact, conclusions of law, and their prior briefs. *See Bd. of Supervisors of Willistown Twp. v. Main Line Gardens, Inc.*, 155 A.3d 39, 45 (Pa. 2017).[4]

> After trial and upon the written Motion for Post-Trial Relief filed by any party, the court may
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> (1) order a new trial as to all or any of the issues; or
> (2) direct the entry of judgment in favor of any party; or
> (3) remove a nonsuit; or
> (4) affirm, modify or change the decision; or
> (5) enter any other appropriate order.

Pa.R.Civ.P. 227.1(a).

[3] Petitioners include six school districts, Greater Johnstown School District, the School District of Lancaster, Panther Valley School District, Shenandoah Valley School District, Wilkes-Barre Area School District, and William Penn School District; Sheila Armstrong, a parent, and S.A., a former student of School District of Philadelphia; Tracey Hughes, a parent, and P. Michael Horvath, a former student of Wilkes-Barre Area School District; Pennsylvania Association of Rural and Small Schools; and The National Association for the Advancement of Colored People-Pennsylvania State Conference.

[4] Governor Josh Shapiro, Dr. Khalid N. Mumin, Acting Secretary of Education, and the Pennsylvania Department of Education (Executive Respondents) filed a response to the Post-Trial Motion, stating they were "adopt[ing] the positions and arguments made by [] Petitioners in their Brief" and "refer[ring] the Court to the extensive record in this case, including Executive Respondents' previously submitted Proposed Findings of Fact and Conclusions of Law, and Post-Trial Briefs, as well as the Court's well-reasoned findings and rulings throughout the tenure of this case, including those in the Court's [] Opinion." (Executive Respondents' Answer at 1-2.) Although she did not file any formal response to the Post-Trial Motion, Joanna E. McClinton, current Speaker of the Pennsylvania House of Representatives, asserted at oral argument that the Court should deny the Post-Trial Motion.

Upon consideration of the Post-Trial Motion, the Answer, the briefs filed,[5] including any prior filings incorporated therein, and oral argument, along with a review of the law, the record, and this Court's prior rulings and decisions, the Court discerns no reversible error.[6] The majority of the alleged errors restate arguments that were previously asserted and adequately addressed in the Court's prior rulings. Thus, the Court need not readdress them here.[7] The Court separately considers selected alleged errors, not because the Court believes it erred, but to clarify some misconceptions or misstatements about its holding.

Legislative Respondents dispute the Court's equal protection analysis.[8] In particular, Leader Cutler argues the Court's analysis is flawed because the two comparator groups – lower-wealth and higher-wealth districts – are not similarly situated. Leader Cutler posits this is because the Court found students in lower-wealth districts generally have greater needs than students in higher-wealth districts. At argument, Leader Cutler explained that while he agreed with Petitioners that all students can learn, that does not mean they can all learn regardless of their social or

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[5] The Commonwealth Foundation for Public Policy Alternatives (Commonwealth Foundation) sought leave to file an amicus brief, which the Court granted provided it refile its proposed amicus brief with any portions containing data or analysis not of record being redacted. (*See* Memorandum Opinion and Order dated April 20, 2023.) The Commonwealth Foundation did not do so. Pennsylvania League of Urban Schools (PLUS) also sought leave to file an amicus brief in support of Petitioners. Similar to the Commonwealth Foundation, the Court granted PLUS leave to file a redacted amicus brief, (*see* Memorandum Opinion and Order dated June 12, 2023), which was filed June 13, 2023.

[6] "[T]he disposition of post-trial motions is [within] the sound discretion of the trial court[.]" *Dep't of Transp. v. Consol. Rail Corp.*, 519 A.2d 1058, 1059 (Pa. Cmwlth. 1986.)

[7] To the extent the Court does not specifically address an allegation of error, the Court concludes such allegations do not establish reversible error and do not warrant relief under Civil Rule 227.1.

[8] At argument, Leader Cutler asked that judgment be entered in favor of Legislative Respondents, but, at a minimum, that the Court declare there was no constitutional violation on the equal protection claim.

family situation, which is what makes them sufficiently dissimilar to preclude an equal protection challenge.

The Court is not persuaded that the two groups are not similarly situated for equal protection analysis. As Leader Cutler recognizes, comparators are similarly situated "when they are alike in 'all relevant respects.'" (Leader Cutler's Br. at 9 (citing *Stradford v. Sec'y Pa. Dep't of Corr.*, 53 F.4th 67, 74 (3d Cir. 2022) (quoting *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992))[9].) There is no requirement that they be "identically situated." *Abdul Jabbar-Al Samad v. Horn*, 913 F. Supp. 373, 376 (E.D. Pa. 1995). Rather, when a right allegedly has been infringed, the courts have looked at whether the comparators have a similar entitlement to the right at issue. For instance, in *Pennsylvania Social Services Union, Local 668 v. Department of Public Welfare, Office of Inspector General*, 699 A.2d 807 (Pa. Cmwlth. 1997), the Court concluded transferred claims investigation agents and supervisors from the Department of Public Welfare (DPW) were not similarly situated to newly hired claims investigation agents and supervisors from the Office of Inspector General (OIG). The Court reasoned the two groups had different expectations of employment under the former Civil Service Act.[10] *Id.* at 813. Namely, the transferred DPW claims agents and supervisors were guaranteed, at the time of hire and as a condition of employment, all of the protections and privileges afforded by the former Civil Service Act, whereas their OIG counterparts were only guaranteed the protections and privileges afforded by the Office of Administration's merit

[9] "The same standards and analysis employed in cases arising under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution apply equally in cases arising under the equal protection provisions of the Pennsylvania Constitution." *Pa. Soc. Servs. Union, Loc. 668 v. Dep't of Pub. Welfare, Off. of Inspector Gen.*, 699 A.2d 807, 812 n.8 (Pa. Cmwlth. 1997).

[10] Act of August 5, 1941 P.L. 752, *formerly* 71 P.S. §§ 741.1-741.1005, repealed by Section 2 of the Act of June 28, 2018, P.L. 460.

selection procedures. *Id.* Thus, "[i]t follows that, if those expectations were violated, each group would have a different claim for relief." *Id.*

Applying that reasoning here, students who attend schools in low-wealth districts have the same right or expectation to a thorough and efficient system of public education as those students who attend schools in a wealthier school district. Stated another way, "if those expectations were violated, each group would have [**the same**] claim for relief." *Id.* (emphasis added). Therefore, unlike the claims agents and supervisors in *Pennsylvania Social Services Union*, whose rights were based on different contractual expectations, neither the Education Clause nor the Equal Protection Clause differentiates between students based on either their need or wealth or the need or wealth of their school districts. Therefore, we cannot say the students here are not similarly situated. Moreover, as Petitioners argue, if Leader Cutler's position was accepted, it would mean that students' rights would depend on where they live and potentially could be eliminated if they were to move into another school district.

Leader Cutler also argues the equal protection analysis is flawed as the Court found no evidence of intentional discriminatory purpose but found disparate impact. However, discriminatory intent is not a factor considered by the courts in cases involving fundamental rights. For example, in *Zablocki v. Redhail*, 434 U.S. 374 (1978), the United States Supreme Court held a Wisconsin statute that required residents who were under an order to pay child support to obtain a court order before marrying violated equal protection principles because the right to marry is a fundamental right. Strict scrutiny was applied to the law without regard to intent. Likewise, in *Schmehl v. Wegelin*, 927 A.2d 183 (Pa. 2007), the Pennsylvania Supreme Court did not consider discriminatory intent in an equal protection

challenge involving the fundamental right of a parent to make child-rearing decisions. In contrast, the cases cited by Leader Cutler were class-based claims, such as *Washington v. Davis*, 426 U.S. 229 (1976), and *Doe ex rel. Doe v. Lower Merion School District*, 665 F.3d 524 (3d Cir. 2011), both of which involved race and required a showing of discriminatory intent.

In addition, Legislative Respondents assert that rational basis review should apply to the equal protection claim. Leader Cutler argues there have been courts that have found local control is a legitimate justification under the rational basis test, most notably the United States Supreme Court in *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973). There, the United States Supreme Court stated:

> [L]ocal control means . . . the freedom to devote more money to the education of one's children. Equally important, however, is the opportunity it offers for participation in the decision[]making process that determines how those local tax dollars will be spent. Each locality is free to tailor local programs to local needs.

Id. at 49-50. The Court in *Rodriguez* also explained that "[t]he history of education since the industrial revolution show[ed] a continual struggle between two forces: the desire by members of society to have educational opportunity for all children, and the desire of each family to provide the best education it can afford for its own children." *Id.* at 49 (quotation marks, citation, and footnote omitted). Legislative Respondents thus contend that the Court erred in not applying a rational basis analysis, finding local control of public education is a legitimate state purpose, and determining the current funding method bears a rational relationship to this purpose.

The Court need not add to its extended analysis, which supports the Court's conclusion that education is a fundamental right under the Pennsylvania

Constitution, and that the equal protection claim should be reviewed under strict scrutiny. Although applying strict scrutiny, the Court, in the alternative, also posited that even if rational basis review applied, Petitioners would prevail. Leader Cutler asks the Court to remove footnote 125 from the Court's opinion, which included this alternative analysis. (Leader Cutler's Br. at 17 (citing Op. at 773 n.125).) The Court declines to do so and stands by its analysis.[11] Contrary to Leader Cutler's assertions, the Court's analysis was not "sparse." (*Id.*) Although the footnote itself is not lengthy, the footnote adopted the reasoning of the courts in *DuPree v. Alma School District No. 30 of Crawford County*, 651 S.W.2d 90 (Ark. 1983), and *Tennessee Small School Systems v. McWherter*, 851 S.W.2d 139 (Tenn. 1993), which were discussed in depth at pages 770 through 773 of this Court's Opinion. The Court found these courts' reasoning persuasive that local control was illusory and that there was no evidence of how local control would be undermined by a more equitable funding system. (Op. at 771-72.) Notably, when this matter was before the Supreme Court previously, that Court also questioned local control as a defense, stating "recitations of the need for local control cannot relieve the General Assembly of its exclusive obligation under the Education Clause," before itself citing *DuPree*. *William Penn Sch. Dist. v. Pa. Dep't of Educ.*, 170 A.3d 414, 442 n.40 (Pa. 2017) (*William Penn II*).[12]

This Court did not, and does not, question the importance of local control. (Op. at 772.) However, for the low-wealth districts here, local control is illusory,

[11] The Court firmly believes, for the reasons stated in its Opinion, that education is a fundamental right and is subject to strict scrutiny. However, as trial courts frequently do, it entertained Legislative Respondents' argument that rational basis applied in the event that determination was reversed on appeal to avoid a remand.

[12] To the extent Legislative Respondents assert other competing government interests serve as compelling reasons for the classification, those interests have already been rejected by the Supreme Court. (*See* Op. at 770 n. 124 (citing *William Penn II,* 170 A.3d at 464).)

(Op. at 681, 771, 772), or, as the *DuPree* Court labeled it, a "fallac[y]," 651 S.W.2d at 93. Something that does not, in reality, exist cannot serve as a rational basis for a classification or be rationally related to a legitimate government interest. Moreover, and importantly, nothing in the Court's order is intended to prevent districts or parents from providing **more** for their children. Rather, the Court's Order requires that the General Assembly must ensure that every child is provided the constitutional minimum – "a meaningful opportunity to succeed academically, socially, and civically." (Op. at 646.)

Also, in relation to the equal protection claim, Senator Ward argues that because reference to "children" was removed from the 1967 version of the Education Clause, it necessarily follows that if children previously had a right to education for equal protection purposes, it was eliminated with that term's removal. Although not expressly addressed in the Court's Opinion, the Court implicitly rejected this argument when it found education was a fundamental right. In so holding, the Court "look[ed] to the Constitution to see if the right infringed has its source, explicitly or implicitly, therein." (Op. at 744 (quoting *Plyler v. Doe*, 457 U.S. 202, 217 n.15 (1982), and *James v. Se. Pa. Transp. Auth.*, 477 A.2d 1302, 1306 (Pa. 1984)). The Court also engaged in what is known as an *Edmunds*[13] analysis, wherein the Court examined, relevant here, the constitutional text and its history.[14] (Op. at 745-747.) The Court found that the phrase "wherein all the children of this Commonwealth above the age of six years may be educated" was removed from the Education Clause in 1967 because it was obsolete, much like the minimum $1 million funding requirement had become by that point. (Findings of Fact ¶¶ 60, 66.)

[13] *Commonwealth v. Edmunds*, 586 A.2d 887 (Pa. 1991).

[14] The third *Edmunds* factor considers related case law from other jurisdictions. *Edmunds*, 586 A.2d at 895.

Notwithstanding, the Court, looking at the language of the Education Clause, which imposed a duty on the General Assembly to maintain and support a "thorough and efficient system of public education," PA. CONST. art. III, § 14, determined it also "at least implicitly, create[d] a correlative right in the beneficiaries of the system of public education – the students." (Op. at 745.) Thus, although reference to children was removed from the Education Clause, it was not because the framers wanted to eliminate any rights those children may have had; rather, it was so deeply understood that children were the beneficiaries of the public system that expressly including them was no longer necessary.

The Court, though, did not rest its determination that education was a fundamental right on this alone. Rather, the Court considered other provisions of the Constitution, such as the constitutional requirement that education be included in the general appropriations bill and the inclusion of the Secretary of Education as the only cabinet-level office required by the Constitution. (*Id.* at 746 (citing PA. CONST. art. III, § 11; art. IV, §§ 1, 8(a).)) The Court also considered the history of the Education Clause and the one common thread throughout that history – the importance of education to preserving the Commonwealth. (*Id.* at 746-47.) The Court finds it interesting that Legislative Respondents fault the Court for looking at anything outside of 1967, when the current Education Clause was adopted, but at the same time, urge the Court to consider its prior history to support the rejection of uniformity in schools.

Legislative Respondents both assert the Court is usurping legislative prerogative and wading into policy areas that are outside the judiciary's review. It is true that the United Stated Supreme Court "has often admonished against such interferences with the State's fiscal policies under the Equal Protection Clause[.]"

Rodriguez, 411 U.S. at 40. The *Rodriguez* Court further stated: "It has . . . been pointed out that in taxation, even more than in other fields, legislatures possess the greatest freedom in classification." *Id.* at 41 (alteration in original, citation omitted). Importantly, though, this matter is not just a matter of taxation. The funding scheme directly impacts the fundamental right to education as provided in the Education Clause of the Pennsylvania Constitution, and the General Assembly cannot elude that responsibility. The Court reiterates, as it stated in its Opinion, (Op. at 775-76), that it has given Respondents broad discretion, in the first instance, to fashion an appropriate remedy, thereby seeking to respect the separation of powers while simultaneously seeking to fulfill the Court's obligation to ensure constitutional compliance.

Leader Cutler also argues that while the Court correctly determined Petitioners bore the burden of showing the funding scheme "clearly, palpably, and plainly" violates the Constitution, the Court erred in applying the standard. (Leader Cutler's Br. at 22.) Specifically, Leader Cutler contends "the Court consistently resolved matters that are the subject of ongoing education policy debate in a manner that weighed *against* a finding of constitutionality." (*Id.* (emphasis in original).) While true that "[a]ny doubts are to be resolved in favor of a finding of constitutionality," *Payne v. Department of Corrections*, 871 A.2d 795, 800 (Pa. 2005) (citation omitted), Leader Cutler's argument appears to blur the line between the burden of proof and the Court's role as factfinder. Over the course of this 49-day bench trial, the Court was tasked with resolving factual disputes, making credibility determinations, and determining the weight of the evidence before it. It is well settled that

> [i]n a nonjury trial, the trial court is the finder of fact and the sole judge of credibility. *In re Funds in the Possession of Conemaugh Twp.*

> *Supervisors*, . . . 753 A.2d 788, 790 ([Pa.] 2000). The trial court "is free to reject even *uncontradicted* testimony it finds lacking in credibility." *D'Emilio v. Bd. of Supervisors, Twp. of Bensalem*, . . . 628 A.2d 1230, 1233 ([Pa. Cmwlth.] 1993) (emphasis added). The trial court's credibility determinations will not be disturbed on appeal. *Spera v. Dep't of Transp., Bureau of Driver Licensing*, 817 A.2d 1236, 1240 (Pa. Cmwlth.), *appeal denied*, . . . 841 A.2d 534 ([Pa.] 2003).

Costa v. City of Allentown, 153 A.3d 1159, 1168 (Pa. Cmwlth. 2017). "Pennsylvania courts have long recognized the broad discretion given to the fact-finding [t]rial [c]ourt[.]" *Brady v. Borough of Dunmore*, 479 A.2d 59, 62 (Pa. Cmwlth. 1984). Here, the Court functioned as the fact-finder. If the Court could not make such determinations and simply had to defer to the legislature and its witnesses, there would have been no need for a trial, and the Pennsylvania Supreme Court already determined in *William Penn II* that this matter was justiciable.

Lastly, Senator Ward asserts the Court's Education Clause standard is not judicially manageable. The Pennsylvania Supreme Court in *William Penn II* stated that "creating a practicable standard" would be a "formidable challenge," 170 A.3d at 450, and having undertaken this challenge, this Court confirms that it certainly was. While the Court was guided by well-settled principles in interpreting the Education Clause, the process was complicated by the Court's obligation to ensure constitutional rights were protected while respecting the powers of the separate branches of government. The Court struck that balance with an interpretation that is at least as manageable as the one proffered by Legislative Respondents, a basic, standard education, which one could also argue is subject to varying interpretations. After all, what is basic and standard to one may not be basic and standard to another. Having reviewed cases from across the nation, some of which have spanned decades, it would have been easy for the Court to have declined to wade into this abyss. However, the Court has an obligation to uphold the Constitution and simply because

a problem is a "formidable challenge" does not mean we should not try to solve it. At oral argument, counsel for Executive Respondents quoted former President John F. Kennedy when discussing why America chose to go to the moon:

> We choose to go to the moon in this decade and do the other things, not because they are easy, but because they are hard, because that goal will serve to organize and measure the best of our energies and skills, because that challenge is one that we are willing to accept, one we are unwilling to postpone, and one which we intend to win, and the others, too.

President John F. Kennedy, Address at Rice University on the Nation's Space Effort (Sept. 12, 1962), *available at* https://www.rice.edu/kennedy (last visited June 21, 2023).

Having faced the "formidable challenge" given to the Court by the Supreme Court head on, this Court now tasks Respondents with the challenge of delivering a system of public education that the Pennsylvania Constitution requires – one that provides for every student to receive 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.

For the foregoing reasons and for the reasons set forth in the Court's prior opinions in this matter, which are incorporated herein, the Court discerns no reversible error. Accordingly, the Joint Application in the Nature of a Motion for Post-Trial Relief is denied, and judgment is entered in favor of Petitioners.

RENÉE COHN JUBELIRER, President Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

William Penn School District; Panther Valley School District; The School District of Lancaster; Greater Johnstown School District; Wilkes-Barre Area School District; Shenandoah Valley School District; Sheila Armstrong, parent of S.A., minor; Tracey Hughes, parent of P.M.H., minor; Pennsylvania Association of Rural and Small Schools and The National Association for the Advancement of Colored People-Pennsylvania State Conference, Petitioners	:	
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O R D E R

NOW, June 21, 2023, the Joint Application in the Nature of a Motion for Post-Trial Relief is **DENIED**, and judgment is entered in favor of Petitioners.

Renée Cohn Jubelirer

RENÉE COHN JUBELIRER, President Judge

Order Exit
06/21/2023