

IN THE SUPREME COURT OF MARYLAND

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SEPTEMBER TERM, 2023

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PETITION DOCKET NO. \_\_\_\_

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THE BRADFORD PLAINTIFFS  
(KEITH A. BRADFORD, *ET AL.*),

*Petitioner,*

v.

MARYLAND STATE BOARD OF EDUCATION,

*Respondent.*

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**PETITION FOR ISSUANCE OF A WRIT OF *CERTIORARI***

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## INTRODUCTION

“[E]ducation is perhaps the most important function of state and local government.” *Plyler v. Doe*, 457 U.S. 202, 222 (1982). Indeed, “it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.” *Id.* at 223. This critical State function is at stake in this case. The issue presented is whether the State is fulfilling its duty under Article VIII of Maryland’s Constitution to provide a “thorough and efficient” public school education to children attending the Baltimore City Public School System (“BCPSS”) where the majority of facilities remain untouched by recent improvement initiatives and need significant renovation to meet modern educational standards, and the vast majority of BCPSS’s 76,000 schoolchildren perform far below State standards in reading and math.

Petitioners, the plaintiff-appellants, respectfully ask this Court to issue a writ of *certiorari* to the Appellate Court to review the March 3, 2023 Memorandum Opinion and Order of the Circuit Court for Baltimore City. Petitioners are parents of “at risk” students attending BCPSS and seek relief applicable to the entire school system. 12/14/1995 Stipulation, Appendix (“App.”) 2.<sup>1</sup> This Court has held that Article VIII requires the State to establish, and fund, an “education that is adequate when measured by contemporary educational standards.” *Montgomery Cnty. v. Bradford*, 345 Md. 175, 189 (1997). In the 2023 Order, however, the Circuit Court contravened this Court’s precedents and prior rulings—as well as interpretations by other State courts of comparable Constitutional

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<sup>1</sup> The Appendix includes the documents required by Rule 8-303(b)(2).

language—by holding that a “thorough and efficient” education requires the General Assembly merely to make “efforts” to establish “at most” a “basic” education. *See* 3/3/2023 Op., App. 1, at 18. The court then granted summary judgment for the State, disregarding compelling evidence that should have precluded such a ruling—even under the incorrect Article VIII standard that it applied. The State’s own data and expert testimony show that over half of BCPSS facilities are severely deficient based on industry standards; that the vast majority of students in BCPSS are not proficient in reading and math; and that the State has failed for years to provide sufficient funding to address these issues or to provide Baltimore schoolchildren the adequate education guaranteed them by the Constitution. *See* 1/13/23 Pls. Proposed Concl. ¶¶ 21-36. Finally, after finding no constitutional violation, the court attempted to restrict the crucial role of this State’s courts in remedying unconstitutional State actions. App. 1 at 18-23.

If allowed to stand, the Circuit Court’s opinion would impermissibly limit Article VIII and deny relief despite undisputed evidence of educational inadequacy. Questions concerning the State’s “highly important” duty to prepare students to “succeed in life” as productive citizens able to participate in our democracy are of immense public importance. *McCarthy v. Bd. of Educ. of Anne Arundel Cnty.*, 280 Md. 634, 650 (1977) (first quote); *Plyler*, 457 U.S. at 223 (second quote). The outcome of this case will affect the thousands of children who now attend BCPSS, their parents, their educators, and, indeed, all Maryland citizens. If relief is not granted, moreover, the State’s unconstitutional actions will continue to harm future generations of schoolchildren.

This Court granted immediate review in *Hornbeck v. Somerset County Board of*

*Education*, 295 Md. 597 (1983), for similar reasons, as that case also concerned the scope of Article VIII. The Court, moreover, has granted immediate review in two earlier appeals in this case. 9/11/00 Order, App. 3; *Board of Education v. Bradford*, 387 Md. 353, 382 (2005), App. 4. It should do so again now.

### **DECISION AND STATUS BELOW**

This petition concerns an opinion and order of the Circuit Court for Baltimore City in *Bradford et al. v. Maryland State Board of Education et al.*, No. 94340058/CE189672, dated March 3, 2023, included in the Appendix at Tab 1. Petitioners filed their Notice of Appeal on March 31, 2023. Defendant, the Maryland State Board of Education, cross-appealed on April 10, 2023. The appeal is pending in the Appellate Court under No. 0209, September Term 2023. Deadlines for briefing have been set, with Petitioners' initial brief due November 13, 2023.

### **STATEMENT REGARDING ADJUDICATION OF CLAIMS**

The Circuit Court's order is final and appealable as it granted the State's motion for summary judgment.

### **QUESTIONS PRESENTED FOR REVIEW**

1. Whether the Circuit Court erred in holding that Article VIII of the Maryland Constitution "only requires an effort by the State to at most provide a basic education," abandoning this Court's precedent and the Circuit Court's prior holdings and ignoring the State's concessions that the Constitution requires the State to provide an education that is adequate by contemporary educational standards.

2. Whether the Circuit Court erred in granting summary judgment for the

State, when the record contains substantial undisputed evidence of the poor conditions of BCPSS school facilities, unacceptably low academic achievement among the vast majority of BCPSS students, as well as State and expert reports demonstrating funding inadequacies.

3. Whether the Circuit Court erred in stating that this Court’s remedial powers to address constitutionally inadequate school funding are limited by the political question doctrine or separation of powers principles.

4. Whether the relief sought by Petitioners is permissible under the Consent Decree and Declaratory Judgment Act.

### **STATUTES AND RULES INVOLVED**

Maryland Constitution, art. VIII, § 1, provides:

The General Assembly . . . shall by Law establish throughout the State a thorough and efficient System of Free Public Schools; and shall provide by taxation, or otherwise, for their maintenance.

Rule 2-501(f) of the Maryland Rules of Civil Procedure provides that summary judgment shall be granted only if there is no genuine issue of material fact and the movant is entitled to summary judgment as a matter of law.

Md. Courts & Judic. Proc. § 3-412(a) provides that “[f]urther relief based on a declaratory judgment or decree may be granted if necessary or proper.”

### **STATEMENT OF BACKGROUND**

**Complaint and 1996 Decision.** Petitioners filed their original complaint in 1994, alleging that the State was not providing a “thorough and efficient” education to the students of BCPSS. Maryland Constitution, art. VIII, § 1. In 1996, the Circuit Court

entered partial summary judgment for Petitioners. The Circuit Court held that Article VIII requires “all students in Maryland’s public schools be provided with an education that is adequate when measured by contemporary educational standards,” and that there was “no genuine material factual dispute” that BCPSS’s schoolchildren were “not being provided with an education” that meets the constitutional standard. 10/18/96 Order, App. 5, ¶¶ 1-2.

**1997 Opinion.** In ruling on a motion by Montgomery County to intervene, this Court explained that the Constitution does not require uniformity of funding or operations, but does “require that the General Assembly establish a Statewide system to provide an adequate public school education to the children in every school district.” *Bradford*, 345 Md. at 181, App. 6. This Court “recogniz[ed]” that “a constitutional violation may be evident” when “the State’s school financing system ‘d[oes] not provide all school districts with the means essential to provide the basic education contemplated by § 1 of Article VIII, when measured by contemporary educational standards.’” *Id.* (quoting *Hornbeck*, 295 Md. at 639).

**Consent Decree.** Days before trial, the parties agreed to a Consent Decree, entered as an order of the Circuit Court. Among other requirements, the Decree required independent evaluations to assess the sufficiency of funding provided to BCPSS. Consent Decree, App. 7, ¶¶ 40-42. The Decree also permitted the Baltimore City School Board to request additional state funds based on the initial evaluation and to return to Court if the State’s response was unsatisfactory. *Id.* ¶ 53.

**2000 Decision.** The independent evaluation concluded that BCPSS needed

substantial additional funding that the State declined to provide, and BCPSS sought judicial intervention. In June 2000, the Circuit Court adopted the findings of the independent evaluators, reiterating that the “thorough and efficient” education required by Article VIII is “an education that is adequate when measured by contemporary educational standards.” 6/30/00 Op., App. 8, at 24-25. It held that schoolchildren in BCPSS were still not receiving such an education, and that additional funding was required. *Id.* at 25-26. The court retained jurisdiction and stated it “trusts that the State will act to bring itself into compliance with” the Constitution “without the need for Plaintiffs to take further action.” *Id.* at 26.

**2000 Appeal and Dismissal.** The State appealed the 2000 order. This Court granted immediate review, over the State’s objection. 9/11/00 Order, App. 3. Ultimately, the State dismissed its appeal pursuant to Maryland Rule 8-601(a). 1/30/01 Notice of Dismissal, App. 9. Then-Superintendent of Education Nancy Grasmick testified before the Circuit Court in August 2004 that the State “agreed to be bound” by the 2000 order. Pl. Ex. 90, App. 10.

**Bridge to Excellence Act.** In response to the Circuit Court’s actions, the legislature established a commission to study education funding and adequacy, and thereafter passed the Bridge to Excellence in Education Act (the “Bridge Act”), effective in 2002. The Bridge Act’s funding formula, if fully implemented over a six-year period, would eventually have provided additional funding to BCPSS that the Circuit Court estimated to be necessary in 2000. The legislature, however, reduced funding starting with legislation passed in FY2007, and as a result created annual funding adequacy gaps

for BCPSS. *See* 1/13/23 Pls. Proposed Concl. ¶¶ 22-23.

**2002 Decision.** The Consent Decree included a provision permitting the court to extend jurisdiction beyond the initial five-year term. In 2002, the Circuit Court extended the Decree’s term and the court’s jurisdiction, to monitor compliance with the June 2000 order and the phased-in funding under the Bridge Act. 6/25/2002 Op., App. 11, at 5.

**2004 Proceedings.** As of early 2004, projected Bridge Act funding for BCPSS had not been provided. BCPSS’s financial shortfall resulted in curtailed services and programs for education. Petitioners returned to court to address the problem. The Circuit Court reaffirmed that the Constitution requires the State to provide funding sufficient for an education that is adequate by contemporary standards. 8/20/2004, Order, App. 12, ¶ 1. After four days of trial, the court further held that the constitutional violation was continuing, and that the State had not yet provided the additional funding declared necessary by the 2000 Order. *Id.* ¶¶ 1-5. The court stated that it trusted the parties to “act in good faith and with all deliberate speed to ensure compliance without the necessity of further action by plaintiffs.” *Id.* ¶ 16.

**2005 Appeal.** The State appealed the Circuit Court’s 2004 decision. This Court granted *certiorari* and dismissed most of the issues on appeal as non-final. *Bradford*, 387 Md. at 382-87. This Court held that only one of the Circuit Court’s holdings was immediately appealable: the order directing BCPSS to put funds towards instructional programs rather than retiring the then-current financial deficit. On that specific order, this Court reversed the Circuit Court. *Id.* at 387-89.

**Petitioners’ Actions from 2005 to 2019.** Between this Court’s 2005 decision and

Petitioners' return to the Circuit Court in 2019, Petitioners advocated for additional State funding through the legislative process and with State and local educational authorities. Petitioners continually sought additional operational funding, were instrumental in obtaining renovation funding for a select number of BCPSS facilities, and generally "continued to raise the issue of inadequate funding through numerous methods over the years." 1/16/2020 Order Denying State MTD, App. 13, at 7-8; 8/26/19 Aff. Verdery.

**2019 Petition.** In 2019, Petitioners sought relief in the Circuit Court under the Declaratory Judgment Act because of serious deficiencies in BCPSS's physical facilities and quality of education. Programs for building and renovating schools have not addressed major defects in most of BCPSS's buildings. When summary judgment motions were filed, there was no funding for necessary renovation or rebuilding of 89 of BCPSS's 149 active school facilities. 08/12/22 Aff. Perkins-Cohen at 3-10. Over 60 percent of facilities are in poor or very poor condition, as evidenced by persistent school closures because of lack of heat or air conditioning. Pls. Ex. 49(A) at 37; Pls. Ex. 56A at 7-8; *see also* 1/13/23 Pls. Proposed Concl. ¶¶ 36, 58 (citing undisputed evidence from the State's own assessment, affidavits from BCPSS personnel, and admitted expert reports).

A record that the State conceded is "sobering" (10/4/22 State SJ Opp. at 5), shows that BCPSS's schoolchildren are not receiving an education that is adequate by any standard: as of 2019, less than 22 percent of students scored as proficient (*i.e.*, at grade level) in Math, and less than 33 percent scored as proficient in English. 1/13/23 Pls. Proposed Concl. ¶ 30 (citing State's 2019 Report Card).

BCPSS lacks the necessary funding to address the unique needs of its student

population. The State underfunded the Bridge Act formula for years, eliminating inflation increases in 2007 and capping them thereafter. By 2017, the gap between the funding received and funding required for BCPSS to achieve adequacy was, by the State’s own calculation, \$342.3 million, significantly larger than the “adequacy gap” that the Circuit Court found in 2000. *Id.* ¶¶ 22-23 (citing Department of Legislative Services analysis). Plaintiffs’ experts’ reports confirmed that substantial additional funding would be necessary to enable BCPSS students to perform to State and national averages. Pls. Ex. 13A at 12; Pls. Ex. 96 at 3.

The State moved on two occasions to dismiss Petitioners’ petition for further relief, arguing that it presented a political question; was unauthorized under the Consent Decree; and that the intervening 21st Century Schools Program, “Built to Learn” Act and “Blueprint for Maryland’s Future” Act mooted the relief sought. Rejecting these arguments, the Circuit Court declined to dismiss the petition, dissolve the Consent Decree, or terminate its jurisdiction. App. 13; 3/7/22 Order, App. 14. The State filed an interlocutory appeal from the denial of its second motion to dismiss. The Appellate Court granted Petitioners’ motion to dismiss the appeal (App. 15); and this Court declined to grant *certiorari* (App. 16). A few months later, however, the Circuit Court granted summary judgment for the State—based on the arguments it had previously rejected in denying the motions to dismiss—and in direct contravention of its own holdings and those of this Court. App. 1.

### **REASONS *CERTIORARI* SHOULD BE GRANTED**

Petitioners respectfully submit that the summary judgment order herein presents

issues of great public significance meriting this Court’s immediate review, including whether Maryland’s courts will ignore prior Maryland jurisprudence and interpret the Constitution more narrowly than other state courts with comparable language to eviscerate the scope of Article VIII of the Constitution and continue to permit generations of Baltimore children to attend schools that the State’s own analyses demonstrate are failing to provide them with an adequate education. This Court may issue a writ of *certiorari* before the Appellate Court has entered a decision when review “is desirable and in the public interest.” Md. Code Ann., Cts. & Jud. Proc. § 12-203 (2002); *see also generally* Glenn T. Harrell, *Petitions for Certiorari—a View from the Bench*, in 26 *Appellate Practice for the Maryland Lawyer* 445 (5th ed., 2018); *Rutherford v. Rutherford*, 296 Md. 347, 363 n.6 (1983) (resolution of a “recurring constitutional [] issue” made review “desirable and in the public interest”).

This case concerns whether the State is fulfilling its constitutional mandate to prepare citizens through public school education to live, work, vote, and function effectively in our complex modern world. In *Hornbeck*, this Court “granted *certiorari* prior to decision by the [Appellate Court] to pass upon the issues of public importance” concerning Article VIII raised. 295 Md. at 619. It likewise granted immediate review of the State’s appeals from the June 2000 order and from the June 2004 order, each of which presented many of the same constitutional issues as this appeal. App. 3, 4.

Immediate review is particularly appropriate here because the Circuit Court’s opinion improperly limited the constitutional rights and remedies available to Maryland’s public schoolchildren. The Circuit Court’s holding was erroneous in three principal areas

that present issues of immense public importance.

*First*, the Circuit Court erroneously lowered the constitutional floor established by Article VIII, contradicting this Court’s holding that the State must provide “a Statewide system to provide an adequate public school education to the children in every school district . . . when measured by contemporary educational standards.” *Bradford*, 345 Md. at 181 (quoting *Hornbeck*, 295 Md. at 639). The Circuit Court consistently applied that definition prior to 2023, and the State acceded to that definition when it voluntarily dismissed its appeal from the 2000 order and agreed to be bound by the 2000 decision. *See* App. 5 ¶ 1; App. 8 at 24-25; App. 12 at 57-58; App. 10. In 2023, however, the Circuit Court held that Article VIII requires only that the State make “an effort” to “at most” provide a “basic” education. App. 1 at 18.

Although this Court has used both “basic” and “adequate” to define the constitutional standard, it has emphasized that the education provided must meet “contemporary educational standards.” *Bradford*, 345 Md. At 181 (quoting *Hornbeck*, 295 Md. At 639). The Circuit Court, however, failed to address “contemporary educational standards,” and further failed to define what it meant by “efforts” to provide “at most” a “basic” education. By eliminating the “contemporary educational standards” component, the Circuit Court suggested that something less than “basic” or “adequate” is acceptable and significantly and detrimentally lowered the governing constitutional standard. Whether the education that must be provided is characterized as “basic” or “adequate,” to be constitutionally sufficient it must meet standards of programming, facility safety and quality, and enable students to meet standards of academic

achievement that the record below demonstrates are not met in Baltimore City public schools.

The Circuit Court’s interpretation of “thorough and efficient” is also out of line with how other state supreme courts interpret their respective constitutional education clauses. *See, e.g., William Penn Sch. Dist. v. Penn. Dep’t of Ed.*, No. 587 M.D. 2014, 676 (Feb. 7, 2023) (a “thorough and efficient” education “requires that every student receive a meaningful opportunity to succeed academically, socially, and civically, by receiving a comprehensive, effective, and contemporary education.”). Even states that require a “basic” rather than a “thorough and efficient” education have more robust requirements for a “basic” education. *See, e.g., Campaign for Fiscal Equity, Inc. v. State*, 801 N.E.2d 326, 330 (N.Y. 2003) (“sound basic education” requires “the basic literacy, calculating, and verbal skills necessary to enable children to eventually function productively as civic participants capable of voting and serving on a jury”). Maryland should not make itself an outlier by adopting a lower standard. This Court should grant *certiorari* to ensure that Article VIII is properly interpreted to require that all students are provided an education that is adequate by contemporary educational standards.

*Second*, applying its erroneous standard and ignoring undisputed evidence from the State’s own analyses and documents, the Circuit Court granted summary judgment for the State, holding that it is undisputed that the students in BCPSS are receiving a “basic” education and that the State’s funding for BCPSS is sufficient. This was a legal error. The Circuit Court overlooked material evidence that supported summary judgment in Petitioners’ favor and that presents genuine issues of material fact precluding summary

judgment for the State. The court erroneously failed to consider how BCPSS students perform against the State's *own* contemporary educational standards or, any educational standards at all, and ignored material and undisputed evidence that such standards are not met. *See* Pls. MSJ Br. at 11, 16-22; Pls. MSJ Reply at 2-7. This Court recently corrected a similar error, reversing a grant of summary judgment because the trial court had ignored material conflicting evidence, including admissible expert testimony, in *Oglesby v. Baltimore School Associates*, -- Md. --, 2023 WL 4755689 (July 26, 2023).

Record evidence—much of it from the State's own documents—establishes that BCPSS's school buildings do not meet Constitutional standards. A report from Johns Hopkins establishes that facilities failures caused BCPSS students collectively to miss 221,000 days of school between 2014 and 2019. Pls. Ex. 56(A) at 11. Undisputed evidence shows that the "Built to Learn" Act provided just a small fraction of the funding needed to bring BCPSS's buildings to contemporary standards, leaving 89 of BCPSS's 149 buildings untouched and unimproved. 8/12/22 Aff. Perkins-Cohen at 3-11; 1/13/23 Pls. Proposed Concl. ¶¶ 33-36. The court did not mention this evidence in its opinion.

The court also ignored evidence that BCPSS students do not receive necessary educational opportunities and that the funding provided for instruction is insufficient. The State's documents demonstrate that the majority of BCPSS's schools score below average in Maryland's ratings of school performance; that the vast majority of BCPSS's students are not proficient in reading and math; and that graduation and attendance rates are low. 1/13/23 Pls. Proposed Concl. ¶ 30. Admitted expert reports and the State's own analyses establish that funding is inadequate and additional funds are necessary to

improve student outcomes. Pls. Ex. 13A at 12; Pls. Ex. 96 at 3; 1/13/23 Pls. Proposed Concl. ¶¶ 16-18, 22-23, 28. The record further demonstrates that the Blueprint Act does not remedy decades of underfunding that have left BCPSS students far behind where they should be had the State kept its funding promises with respect to earlier education formulas; fails to provide sufficient funds for critical categories, such as students with special needs; its funds are not guaranteed; and, and even if provided will not be fully phased in for many years. 1/13/23 Pls. Proposed Concl. ¶¶ 55-56; 10/3/22 Suppl. Aff. Perkins-Cohen ¶¶ 19-44. The Circuit Court’s order does not acknowledge this contrary evidence, failing to properly apply the summary judgment standard. Bypass review is appropriate given the importance of the questions presented and the effect of the decision on the schoolchildren of Baltimore City.

*Third*, the Circuit Court erroneously limited judicial review of challenges under Article VIII. To redress this constitutional violation, Petitioners seek: a declaration that the State is failing to provide the “thorough and efficient” education guaranteed by Article VIII with respect to physical facilities and instructional opportunities; a declaration that additional funding is required to remedy these violations; an order requiring the State to submit a plan for the court’s approval to remedy the Constitutional violations; and, pending approval of that plan, an order directing the State to provide downpayments toward Constitutional adequacy. The Circuit Court held that the “political question” doctrine precluded something that Petitioners did not seek: an order directing the General Assembly to appropriate funds. App. 1 at 18-22. This Court’s review is necessary to clarify the judiciary’s crucial role in assessing constitutional compliance and

remediating constitutional violations.

This Court should grant *certiorari* to review these important questions. Review will ensure that Article VIII is properly applied, that evidence of educational inadequacy is not ignored, and that the judiciary will retain its vital role in deciding constitutional issues.

Bypass review is also appropriate to prevent continuing harm to the children of Baltimore City, and to the public, from a constitutionally-inadequate education. Approximately 76,000 children attend BCPSS. The majority of these children are Black or Brown. *See City Schools at a Glance*, at <https://www.baltimorecityschools.org/district-overview>. BCPSS has the highest “at risk” index in the State, i.e., the combined percentage of students who live in poverty, have special educational needs, and for whom English is a second language. 8/12/22 Pls. MSJ Br. at 12-15 (citing State data). These children have been attending constitutionally-inadequate schools for their entire academic careers; the Circuit Court’s opinion allows the State to continue to fail them. Petitioners tried for more than a decade to use the political system to address the problems of inadequate funding, but the political system has failed to produce sufficient results. Children should not be made to wait to obtain the education to which they are entitled before this Court intercedes.

### **CONCLUSION**

For the foregoing reasons, Petitioners respectfully request that this Court issue the requested Writ of *Certiorari*.

Respectfully submitted

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## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing were served via e-mail and regular mail on the 14 day of August, 2023 to:

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