

A Tale of Two Constitutions: How Maryland Deprives Baltimore City Public School Students of a Constitutionally Adequate Education

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INTRODUCTION

Maryland’s constitution promises a “thorough and efficient” education for all children. Public school students in Baltimore City—one of two predominantly Black counties in the state—are chronically deprived of this right. Their schools are underfunded, denying them the baseline quality of education the state’s framers intended. Part I briefly explores Maryland’s history of segregating Baltimore public schools by race and poverty level. Part II surveys Maryland’s history of school funding litigation, culminating in the recent *Bradford II* decision handed down by the Circuit Court for Baltimore City in 2023. Part III reviews the text of Article VIII § 1 of the Maryland constitution, ratification debates, and judicial interpretations from states with identical or similar constitutional provisions to synthesize a definition of “thorough and efficient” and what it entails.¹ Part IV argues that the circuit court did not correctly interpret the constitutional text and precedent when it held, in *Bradford II*, that a “thorough and efficient” education requires, at most, a basic or adequate education for students.²

I. A BRIEF HISTORY OF MARYLAND’S SEGREGATION AND CONCENTRATED
POVERTY

A. *Maryland’s Legacy of Racial Segregation*

Baltimore, Maryland, is the birthplace of racial zoning.³ After George W. F. McMechen—a prominent Black lawyer in Baltimore—moved with his family to a

1. “There are three main approaches to interpreting state constitutional standards for education: historical analysis, plain meaning, and consideration of interpretations in jurisdictions with similar language.” Jeremy T. Neff, *A Thorough and Efficient Definition of “Thorough and Efficient”: The Starting Point for Meaningful School Funding Reform*, 33 J. EDUC. FIN. 69, 93 (2007).

2. *Bradford v. Md. State Bd. of Educ. (Bradford II)*, No. 24-C-94-340058, slip op. at 18 (Cir. Ct. Balt. City Mar. 3, 2023), https://www.aclu-md.org/app/uploads/2023/03/2023_-_bradford_v_msbe_-_opinion.pdf [<https://perma.cc/P7SE-FNYY>]. In 2024, the Maryland Appellate Court of Maryland heard this case on appeal. *Bradford v. Md. State Bd. of Educ.*, 326 A.3d 65 (Md. App. Ct. 2024). It focused its opinion on whether the consent decree had terminated, extinguishing the courts’ jurisdiction over the litigation. *Id.* at 69. It held that it had and remanded the case with instructions to dissolve the consent decree. *Id.* It declined to answer whether the trial court had erred in its interpretation of “thorough and efficient,” finding the matter to be moot after the termination of the consent decree. *Id.* However, the court noted that the plaintiffs could raise the question of whether, based on current evidence, BCPSS students are still being deprived of a constitutionally adequate education in new litigation. *Id.* at 81.

3. While San Francisco adopted an ordinance in 1890 seeking “to completely exclude Chinese residents from certain areas of the city,” it was swiftly challenged and overturned in court. Stephen Menendian, *The Uneven March of Progress: The Past, Present, and Future of Zoning Reform in the United States*, 21 RUTGERS J.L. & PUB. POL’Y 73, 79 (2023). “In 1910, Baltimore adopted the first comprehensive municipal racial zoning ordinance, which divided the city into racial districts, regulating who could reside based upon race.” It was this later legislative innovation that was “quickly emulated by many other southern cities.” *Id.* at 80; see also SHERYLL CASHIN, WHITE SPACE, BLACK HOOD: OPPORTUNITY HOARDING AND SEGREGATION IN THE

predominantly white street, his new neighbors formed a protective association to prevent any further encroachment of colored people on “some of the best residential streets in the city.”⁴ In 1910, the city council passed an ordinance criminalizing Black movement into these neighborhoods.⁵ Unsatisfied with a piecemeal approach to segregation, the council later passed an ordinance prohibiting any Black person from moving into any majority white block.⁶ The law in Baltimore now prevented any Black person from moving into any majority white block and vice versa. Racial ordinances were not the only tool segregationists used to keep Baltimore “a Jim Crow town.”⁷ Wealthy neighborhoods throughout the city also used restrictive covenants to prohibit owners from ever renting or selling to Black people.⁸

B. Maryland’s History of Concentrating Poverty in Baltimore Through Its Use of Public Housing

Neighborhoods that were predominantly Black received far different levels of investment when compared to those that were predominantly white.⁹ This was due, in part, to the Home Owners’ Loan Corporation’s (HOLC) practice of rating any predominantly Black neighborhood as “hazardous.”¹⁰ This process is referred to as “red-lining,” and has broadly “institutionalized a two-tiered system of traditional lending and investment in white areas, predatory lending by speculators, and disinvestment in Black areas.”¹¹ According to HOLC’s “eugenics-infused underwriting standards,” Black people were “dangerous,” “undesirable,” and a “detrimental influence.”¹² This hazardous rating tracked Baltimore’s Black population, which was already confined to the west and east by restrictive covenants.¹³

While white people were free, and even encouraged to pursue the American dream in suburbia, Baltimore County virulently opposed any public housing or development that invited or retained Black residents.¹⁴ The resulting “failure to establish a public housing authority caused thousands of poor, primarily Black, families to

AGE OF INEQUALITY 9-10 (2021) (describing Baltimore as “the city that invented racial zoning” and where “[r]acial zoning was born”).

4. CASHIN, *supra* note 3, at 9-10.

5. *Id.*

6. Emily Lieb, *The “Baltimore Idea” and the Cities It Built*, S. CULTURES, Summer 2019, at 104, 109-10.

7. *Id.*

8. CASHIN, *supra* note 3, at 13-14.

9. *Id.* at 14.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.* at 16.

14. Declaration of Lawrence T. Brown, PH. D. ¶¶ 8-11, *Balt. Cnty. Branch of the NAACP v. Balt. Cnty.*, No. 21-cv-03232, 2022 WL 888419 (D. Md. Mar. 25, 2022) [hereinafter Brown Declaration], https://www.aclu-md.org/app/uploads/2024/08/baltimore_county_motionbalt_county_brown_declaration_final.pdf [<https://perma.cc/W8NJ-BUWL>]. Dr. Brown is a community research scientist at the Center for Urban Health Equity at Morgan State University. *Id.* ¶ 3. He is the author of *The Black Butterfly: The Harmful Politics of Race and Space in America* and won Baltimore’s Bold Thinker award in 2018 for his research on Baltimore’s racial segregation. *Id.* ¶¶ 4-5. His declaration offers a helpful description of Baltimore County’s history of racial discrimination.

move from Baltimore County to Baltimore City.”¹⁵ It became “a daily experience to find poor families moving from the county to the city of Baltimore because of the absence of a public housing authority (and, consequently, of public housing) in the county.”¹⁶

In addition to refusing public housing, Baltimore County systematically displaced low-income Black families throughout the 1960s and 1970s by rezoning Black residential areas for business or industry while sparing nearby white areas.¹⁷ The improvements that attended this increased industrialization often came at the expense of Black communities. Most of those affected were forced to seek housing in Baltimore City.¹⁸ In addition to this displacement, former Baltimore County Executive—the county’s lead executive—Dale Anderson “made keeping Black individuals out of the County a central policy goal of his administration in the 1970s.”¹⁹ Under his watch, the County destroyed all or part of numerous historically Black neighborhoods and replaced them with roads, schools, and commercial development.²⁰ Turner Station, for example, was a “white residential pocket located in an industrial area.”²¹ It was “zoned to remain residential and thereby avoided destruction, while the surrounding Black residential area (with homes which were built at the same time) was zoned industrial. As a result, most of the Black homes were torn down.”²² Furthermore, the County worked to inhibit Black homeownership in the area. Real estate agents were instructed “to inform the police if they sold Baltimore County homes to Black people.”²³ Unsurprisingly, in 1974 the U.S. Commission on Civil Rights described the County as a “white noose” around Baltimore City.²⁴ Baltimore County remains the “most segregated major county in Maryland and one of the most hypersegregated metropolitan areas in the country.”²⁵

After decades of Maryland’s racist and restrictive policies, it is clear that “Baltimore’s ghetto was not created by private discrimination, income differences, personal preferences, or demographic trends, but by purposeful action of the government

15. *Id.* ¶ 10 (citing U.S. COMM’N ON C.R., EQUAL OPPORTUNITY IN SUBURBIA 1, 34 (1974)).

16. U.S. COMM’N ON C.R., *supra* note 15, at 34.

17. *Id.* at 30-31.

18. *Id.* at 31; Brown Declaration, *supra* note 14, ¶ 12.

19. Brown Declaration, *supra* note 14, ¶ 14; *see also* Doug Donovan, *Baltimore County to Curb Housing Segregation*, BALTIMORE SUN (June 29, 2019 at 06:24 ET), <https://www.baltimoresun.com/2016/03/15/baltimore-county-to-curb-housing-segregation/> [<https://perma.cc/B9P5-LKLF>] (“Anderson, a Democratic county executive from 1966 to 1974, campaigned on a promise to keep public housing out of the county.”).

20. Brown Declaration, *supra* note 14, ¶ 15 (citing ANTERO PIETILA, NOT IN MY NEIGHBORHOOD: HOW BIGOTRY SHAPED A GREAT AMERICAN CITY 231-32 (2010)).

21. U.S. COMM’N ON C.R., *supra* note 15, at 31.

22. *Id.*

23. Brown Declaration, *supra* note 14, ¶ 15 (citing ANTERO PIETILA, *supra* note 20, at 235).

24. U.S. COMM’N ON C.R., *supra* note 15, at 7.

25. Brown Declaration, *supra* note 14, ¶ 28. Hypersegregated areas “are those where [B]lack residents experience high levels of segregation across a range of measures, including the extent to which [B]lack residents live in neighborhoods that are all or almost-all [B]lack and the extent to which [B]lack residents live in cities’ cores, where housing is often oldest.” Michael Hotchkiss, *Hypersegregated Cities Face Tough Road to Change*, PRINCETON UNIV., (May 18, 2015, at 10:30), <https://www.princeton.edu/news/2015/05/18/hypersegregated-cities-face-tough-road-change> [<https://perma.cc/F8XF-XRPP>].

in violation of the Fifth, Thirteenth and Fourteenth Amendments.”²⁶ As of 2022, Baltimore County did not “own or operate any public . . . or low-income housing.”²⁷ “While ignoring the housing needs of Black and other non-[w]hite family households, the County leads its suburban neighbors in aggressively collecting federal and state rental housing subsidies for senior housing, which in Baltimore County serves mostly [w]hites.”²⁸ This legacy of intentional segregation and concentration of Black citizens and poverty in Baltimore creates the context for structural disadvantage and disinvestment in Baltimore City Public Schools that, in turn, deprives Baltimore’s children of their constitutional right to a thorough and efficient education.

II. MARYLAND’S HISTORY OF SCHOOL FUNDING LITIGATION

Maryland’s constitution provides that the legislature shall “establish throughout the State a thorough and efficient System of Free Public Schools.”²⁹ Maryland establishes its own education standards through policies set by the State Board of Education.³⁰ These standards define the elements of an adequate education in Maryland and the minimum levels of student performance that must be attained in each district.³¹ The State of Maryland, through its board, superintendent, and various commissions, has explicitly acknowledged and accepted that “all children have the right to attend schools in which they can progress and learn” and that “all children shall have the real opportunity to learn equally rigorous content.”³² While these principles theoretically apply to all of Maryland’s children, in reality, they stop just short of Baltimore’s city limits.

The Maryland Court of Appeals first considered the exact weight of the State’s constitutional obligations in *Hornbeck v. Somerset County*.³³ There, the Boards of Education of three counties, along with taxpayers, students, parents, public officials, and school superintendents brought an action challenging the constitutionality of Maryland’s system of public school financing.³⁴ This action focused exclusively on the State’s financing formula, arguing that the plaintiffs were unable to provide a constitutionally adequate education for students because of the paucity of funds they were receiving.³⁵ After consulting the 1867 ratifying debates, the court concluded

26. Richard Rothstein, *From Ferguson to Baltimore: The Fruits of Government-Sponsored Segregation*, 24 J. AFFORDABLE HOUS. AND CMTY. DEV. L., 205, 206 (2015).

27. Brown Declaration, *supra* note 14, ¶ 27.

28. *Id.*

29. MD. CONST. art. VIII, § 1.

30. MD. STATE BD. OF EDUC., GOVERNANCE AND OPERATIONS MANUAL 4 (2025) (describing how the State Board of Education possesses the specific power to “explain the true intent and meaning of the Education Article,” “[e]stablish basic policy and guidelines for the program of instruction for the public schools,” and “[i]mplement the provisions of the Education Article that pertain to the public schools and adopt bylaws, rules, and regulations for the administration of public schools”).

31. *Id.*

32. Complaint ¶ 30, *Bradford v. Md. State Bd. of Educ.*, Nos. 94340058/CE189672, 95258055/CL202151 (Cir. Ct. Balt. City Nov. 26, 1996) [hereinafter *Bradford* Complaint], https://www.aclu-md.org/app/uploads/2022/10/1994_bradford_complaint.pdf [<https://perma.cc/5XZ2-6HN5>].

33. *Hornbeck v. Somerset Cnty. Bd. of Educ.*, 458 A.2d 758 (Md. 1983).

34. *Id.* at 764.

35. *Id.*

that Maryland's constitutional delegates had no intention of requiring the state's system of education to be uniform.³⁶ It proved insufficient for plaintiffs to merely highlight a disparity in resources across school districts without establishing that such a disparity was impeding students from enjoying a thorough and efficient system of education.³⁷ The court noted that plaintiffs did not show—or even allege—that the State's qualitative standards, as set out by Maryland's Department of Education, were not being met in their districts.³⁸ Sixteen years later, in *Bradford v. Maryland State Board of Education*, Baltimore City Public School students succeeded in demonstrating such a failure.³⁹

In *Bradford v. Maryland State Board of Education (Bradford I)*⁴⁰, parents of students challenged the Maryland State Board of Education's pervasive failure to provide a constitutionally adequate education to Baltimore's students.⁴¹ The plaintiffs alleged that the city's schools were so underfunded that they were incapable of meeting the State's constitutional obligation as measured by the Maryland Department of Education's promulgated standards.⁴²

Plaintiffs offered evidence of persistent gaps between the Maryland Board of Education's standards and the Baltimore City Public School System's (BCPSS) performance. This evidence, in part, derived from the Maryland School Performance Assessment Program (MSPAP) and Maryland Functional Tests.⁴³ The former constitutes a set of criterion-referenced tests developed by the state board to evaluate third, fifth, and eighth grade students progress in what they "should know, be able to do, and how they should act as a result of their educational experiences."⁴⁴ The latter is a series of state tests "designed to measure the extent to which high school students have attained 'basic competencies' in the areas of reading, mathematics, writing, and citizenship."⁴⁵

36. *Id.* at 772 (citing PHILIP PERLMAN, DEBATES OF THE MARYLAND CONSTITUTIONAL CONVENTION OF 1867, at 198-203, 243-48, 251-56 (1923)).

37. *Id.* at 776, 780.

38. *Id.* at 780.

39. Order ¶¶ 1-2, *Bradford v. Md. State Bd. of Educ.*, Nos. 94340058/CE189672, 95258055/CL202151 (Cir. Ct. Balt. City Nov. 26, 1996) [hereinafter *Bradford I* Order], https://www.aclu-md.org/app/uploads/2022/10/1996_bradford_order.pdf [<https://perma.cc/48HQ-8K4Y>] (granting in part and denying in part Plaintiffs' Motion for Partial Summary Judgment, entered on October 18, 1996); Consent Decree at 1-2, *Bradford v. Md. State Bd. of Educ.*, Nos. 94340058/CE189672, 95258055/CL202151 at (Cir. Ct. Balt. City Nov. 26, 1996) [hereinafter *Bradford I* Consent Decree], https://www.aclu-md.org/app/uploads/2022/10/1996_bradford_consentdecree.pdf [<https://perma.cc/D5EW-4LPL>] (resolving initial litigation via settlement between the parties, entered on November 26, 1996). This Order and Consent Decree, which together resolved the initial stages of the litigation, are referred to as *Bradford I* throughout this piece.

40. See *supra* note 39. *Montgomery Cnty. v. Bradford*, 691 A.2d 1281 (Md. 1997) was a case addressing whether Montgomery County was entitled to intervene. See *id.* at 1282. *Montgomery Cnty.* is also sometimes referred to as "Bradford I" in other writings. However, in this Note, "*Bradford I*" refers to the adjudicatory proceedings around the 1996 complaint and consent decree. See *supra* note 39.

41. *Bradford* Complaint, *supra* note 32, ¶¶ 1-6, 28-41.

42. *Id.* ¶ 41.

43. *Id.* ¶¶ 42-58.

44. *Id.* ¶ 42.

45. *Id.* ¶ 53.

The results of both series of tests demonstrate how far Baltimore City's schools were falling below Maryland's own understanding of its Article VIII obligation. In the 1990-91 and 1991-92 school years, "only 5% to 16% of [Baltimore City Public Schools] students achieved a 'satisfactory' scores on each of six different [MSPAP] tests in grades 3, 5, and 8."⁴⁶ In Maryland's twenty-three other school districts, the proportions of students who achieved "satisfactory" scores were 2.5 to 7 times greater than that of Baltimore City's.⁴⁷ Baltimore City's public schools also consistently "failed to meet the State's satisfactory standards for the Maryland Functional Tests."⁴⁸ In fact, they consistently earned the lowest pass rate of any of the state's twenty-four school districts on these tests,⁴⁹ meaning that the vast majority of students in BCPSS entered and attended high school without an adequate understanding of key subject areas.

The court agreed that the state's constitution "requires that all students in Maryland's public schools be provided with an education that is adequate when measured by contemporary educational standards."⁵⁰ After reviewing the evidence offered by the plaintiffs, the court further concluded that this standard was not being met in Baltimore City.⁵¹ Rather than proceeding to trial, the parties agreed to a consent decree approved and entered by the circuit court.⁵² BCPSS agreed to completely restructure the school system in exchange for allocating an additional \$230 million in state education aid to the city over the next five years.⁵³ The district and the State also agreed to retain an independent consultant to evaluate the sufficiency of the additional funding provided by the State.⁵⁴ The consultant would assess the need for any further funding to reach constitutional adequacy and evaluate the progress being made toward this standard.⁵⁵ While this was an important victory, many of the promises unfortunately failed to materialize, prompting the plaintiffs to return to the circuit court multiple times over twenty years later to seek further relief.⁵⁶

46. *Id.* ¶ 45.

47. *Id.*

48. *Id.* ¶ 56.

49. *Id.*

50. *Bradford I* Order, *supra* note 39, ¶ 1.

51. *Id.* ¶ 2.

52. *Bradford I* Consent Decree, *supra* note 39, at 3, 22-23.

53. *Id.* ¶¶ 2, 8-39, 43, 47.

54. *Id.* ¶¶ 40-42.

55. *Id.* ¶ 41.

56. *Bradford v. Md. State Bd. of Educ.*, Nos. 94340058/CE189672, 95258055/CL202151, at 25-26 (Cir. Ct. Balt. City Jun. 30, 2000), https://www.aclu-md.org/app/uploads/2022/10/2000_bradford_opinion.pdf [<https://perma.cc/4FEJ-HA7C>] (granting additional funding after finding the State was still failing to provide a constitutionally adequate education to Baltimore public school students); *Bradford v. Md. State Bd. of Educ.*, Nos. 94340058/CE189672, 95258055/CL202151, at 4-5 (Cir. Ct. Balt. City Jun. 25, 2002), https://www.aclu-md.org/app/uploads/2022/10/2002_bradford_opinion.pdf [<https://perma.cc/M8JV-TP2R>] (extending the court's judicial supervision over the implementation of the terms of the consent decree after finding that the State was still failing to comply with the court's orders on funding); *Bradford v. Md. State Bd. of Educ.*, Nos. 94340058/CE189672, 95258055/CL202151, at 25-26, 67-70 (Cir. Ct. Balt. City Aug. 20, 2004), https://www.aclu-md.org/app/uploads/2022/10/2004_bradford_opinion_part1.pdf, https://www.aclu-md.org/app/uploads/2022/10/2004_bradford_opinion_part2.pdf [<https://perma.cc/3FCE-F7D8>] (extending judicial supervision over the implementation of the consent decree after finding that Baltimore City public schools remain "constitutionally

This effort to hold the State to its constitutional obligation culminated in *Bradford II*.⁵⁷ In *Bradford II*, the plaintiffs claimed that the defendants failed to follow through on their constitutional and legal obligations, and continued to underfund the BCPSS in violation of the Maryland Constitution, the Consent Decree, and prior orders of the circuit court.⁵⁸ They sought further relief to redress the “unconstitutionally inadequate, underfunded, and decrepit” public schools in Baltimore City.⁵⁹ The State’s own studies have demonstrated an annual adequacy gap—the gap between the amount of funding a constitutionally sufficient education would require and the amount actually being given to Baltimore—of \$290 million in fiscal year (FY) 2015.⁶⁰ Decades after the original settlement, BCPSS students, when compared to their peers across the state, have continued to learn from teachers with less education and experience, scored lower on almost every assessment, graduated from high school at a lower rate, and dropped out at nearly double the average rate.⁶¹

The circuit court, however, held that it could not act on the State’s continuing violations of previous orders and Maryland’s Constitution.⁶² Instead, the court relied on *Hornbeck*’s rejection of a requirement of mathematical uniformity in funding to conclude that “the Maryland Constitution only requires an effort by the state to at most provide a basic education.”⁶³ In just one sentence, the circuit court redefined and severely reduced Maryland’s educational promise. With this new interpretation, the court concluded that there was no material dispute of fact and BCPSS was providing the necessary basic education.⁶⁴

inadequate” as well as substantially and unlawfully underfunded); Memorandum of Grounds, Points and Authorities in Support. of Plaintiffs’ Petition for Further Relief at 5-6, 15-19, *Bradford II*, No. 24-C-94-340058 (Cir. Ct. Balt. City Mar. 3, 2023) [hereinafter *Bradford II* Memo. in Supp. of Pet. for Further Relief], <https://www.naacpldf.org/wp-content/uploads/Bradford-v-MD-State-Board-of-Education.pdf> [https://perma.cc/EE42-3H6K] (seeking the court’s assistance after continued failures by the State to address the constitutional and funding inadequacies in BCPSS schools, filed by the Plaintiffs on March 3, 2023).

57. *Bradford II*, No. 24-C-94-340058 (Cir. Ct. Balt. City Mar. 3, 2023), https://www.aclu-md.org/app/uploads/2023/03/2023_-_bradford_v_msbe_-_opinion.pdf [https://perma.cc/P7SE-FNYY].

58. *Bradford II* Memo. in Supp. of Pet. for Further Relief, *supra* note 56, at 1-5.

59. *Id.* at 1.

60. *Id.* at 15-19.

61. *Id.* at 3.

62. *Bradford II*, slip op. at 9-10, 12-13, 15, 18, 23 (ruling against Plaintiffs’ Motion for Summary Judgment and granting the Maryland State Board of Education’s Motion for Summary Judgment for four reasons: 1) because it found there was not a final judgment under which to grant relief under the Maryland Declaratory Judgments Act; 2) because it found that no specific violations of the Consent Decree were alleged; 3) because it found that a “basic education” was provided to students at BCPSS as constitutionally required; and 4) because it held the relief requested to be a “non-justiciable political question”). *But see generally* *Bradford II* Memo. in Supp. of Pet. for Further Relief, *supra* note 56 (describing the State’s continued violations of the 1996 Consent Decree, arguing that such violations violated the Maryland Constitution, and arguing that the court has the power to issue the requested relief).

63. *Bradford II*, slip op. at 18 (citing *Hornbeck v. Somerset Cnty. Bd. of Educ.*, 295 Md. 597, 632 (1983)).

64. *Id.*

III. INTERPRETING “THOROUGH AND EFFICIENT”

Maryland’s constitution obligates the state legislature to “establish throughout the State a thorough and efficient System of Free Public Schools.”⁶⁵ To better understand what this mandate entails, this section explores the definitions of “thorough” and “efficient” at the time this Article was ratified. In 1867, “thorough” was understood to mean “complete” or “perfect.”⁶⁶ “Efficient” meant “causing effects” or “producing,” referring to an ability to achieve the intended result.⁶⁷ These descriptors together contemplate full, effective, and productive systems of education.

This interpretation is further supported by the history of the “thorough and efficient” standard itself. Ohio’s ratifiers first drafted the phrase in 1851—sixteen years before Maryland’s delegates gathered to rethink their own State’s educational obligations.⁶⁸ Ohio was not only the first state to draft this language, but it was also recognized as a model for Maryland delegates.⁶⁹ This influence, coupled with the overwhelming vote in favor of adoption, and the absence of debate over the provision strongly indicates that the Maryland delegates intended to incorporate Ohio’s constitutional standard.⁷⁰

With this historical context in mind, it is useful to examine Ohio’s interpretation of the “thorough and efficient” standard it originated. The phrase can be traced back to 1837 when Calvin Stowe, “an early advocate for public schools in Ohio . . . reported on the Prussian education system and offered advice to Ohio’s legislature for improving public schools in the state.”⁷¹ His report focused on the thorough nature of the country’s education system and the efficiency with which it achieved its goals.⁷² A number of the lawmakers to whom this report was directed went on to craft the country’s first “thorough and efficient” educational provision.⁷³

65. MD. CONST. art. VIII, § 1.

66. *Thorough*, 2 AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (1828).

67. *Efficient*, 1 AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (1828).

68. Neff, *supra* note 1, at 69; Pauley v. Kelly, 255 S.E.2d 859, 866 (W. Va. 1979) (identifying Ohio as the “first to use the words ‘thorough and efficient’ to describe the education system mandated by its legislature”).

69. Neff, *supra* note 1, at 81 (noting that the limited debate on Maryland’s adoption of the “thorough and efficient” language included reference “to the need to emulate the ‘perfect’ and ‘efficient’ state school systems of the western states—a reference that doubtless included Ohio as an educational leader in the old West”).

70. See PHILIP PERLMAN, DEBATES OF THE MARYLAND CONSTITUTIONAL CONVENTION OF 1867, at 256-57 (1923). (proposing a constitutional section featuring the “thorough and efficient” language was read out from committee and was passed to a second reading without amendment or debate); see also Neff, *supra* note 1, at 81 (“The remarkable similarity in the constitutional provisions, the short timeframe within which they were adopted, and the absence of debate suggest that there was a common understanding of what ‘thorough and efficient’ education meant and that the intent of Ohio’s framers was being adopted.”).

71. Neff, *supra* note 1, at 73.

72. “The proper object of education is a thorough development of all the intellectual and moral powers—the awakening and calling forth of every talent that may exist, even in the remotest and obscurest corner of the State, and giving it a useful direction . . .” *Id.* at 73 n.26 (quoting WILLIAM LEWIS, BIOGRAPHY OF SAMUEL LEWIS, FIRST SUPERINTENDENT OF COMMON SCHOOLS FOR THE STATE OF OHIO 270 (1857)). “The striking features of this system . . . are obvious. . . . No one can fail to observe its great completeness, both as to the number and kind of subjects embraced in it, and as to its adaptiveness to develope [sic] every power of every kind, and give it useful direction . . .” *Id.* (first and second omissions in original) (quoting LEWIS, *supra*, at 304).

73. Neff, *supra* note 1, at 73.

A. States With “Thorough and Efficient” Provisions

Like Ohio, West Virginia’s constitution requires its legislature to provide a “thorough and efficient” system of public education. The language used by each state is helpful to understanding Maryland’s own obligation.⁷⁴ This is particularly important given that both Ohio and West Virginia adopted the language before Maryland, and evidence suggests that Maryland’s framers were aware of these provisions when drafting and adopting their own.⁷⁵

Other states, including New Jersey and Pennsylvania, adopted these standards after Maryland, but were still used in *Hornbeck* as helpful sources of interpretation for the identical provisions.⁷⁶ South Dakota, while not mentioned in the *Hornbeck* decision or other subsequent school financing opinions, also bears a similar educational obligation and has carefully interpreted what this requires of its legislature.⁷⁷ This section explores states with constitutional provisions requiring “adequate” or “basic” standards of education to demonstrate that despite *Bradford II*’s new standard of constitutional sufficiency for public education, an adequate or basic education comprises far more than a mere attempt to provide one.⁷⁸

1. Ohio

Ohio’s constitution requires that “[t]he General Assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state.”⁷⁹ The state’s courts have frequently defined this standard by what it is *not*. In an early funding challenge similar to *Hornbeck*, the Supreme Court of Ohio held that a “thorough system could not mean one in which part or any number of the school districts of the state were starved for funds. An efficient system could not mean one in which part or any number of the school districts lacked teachers,

74. The language of one state’s constitutional provisions can be relevant in determining the significance of another’s especially where, as here, typical issues like differences in adoption histories, legal precedents, or additional modifying language are not at issue. Neff, *supra* note 1, at 93; see also William Thro, *Originalism and School Finance Litigation*, 335 ED. LAW REP. 538, 553-54 (2016) (“[T]he language of one State’s constitutional provisions can be relevant to determining the significance of a second State’s constitutional provision.”); Ronald Collins, *Reliance on State Constitutions: Some Random Thoughts*, 54 MISS. L.J. 371, 410 (1984) (“There is no sound reason for state courts not to look to one another for guidance in the constitutional law area just as they do in civil and criminal law.”).

75. Susan P. Leviton & Matthew H. Joseph, *An Adequate Education for All Maryland’s Children: Morally Right, Economically Necessary, and Constitutionally Required*, 52 MD. L. REV. 1137, 1152 n.89 (1993).

76. *Hornbeck v. Somerset Cnty. Bd. of Educ.*, 458 A.2d 758, 777, 779-80 (Md. 1983).

77. S.D. CONST. art. VIII, § 15; *Davis v. State*, 804 N.W.2d 618, 627 (S.D. 2011).

78. *Bradford II*, No. 24-C-94-340058, slip op. at 18 (Cir. Ct. Balt. City Mar. 3, 2023) (citing *Hornbeck*, 458 A.2d at 776-80), https://www.aclu-md.org/app/uploads/2023/03/2023_-_bradford_v_msbe_-_opinion.pdf [<https://perma.cc/P7SE-FNYY>]; Brief of Appellants the Bradford Plaintiffs at 15, *Bradford v. Md. State Bd. of Educ.*, 326 A.3d 65 (Md. App. Ct. 2024) (No. 24-C-94-340058) [hereinafter Br. of Appellants], https://www.aclu-md.org/app/uploads/2023/11/2023_-_bradford_v_msbe_-_appellants_page_-_proof_brief.pdf [<https://perma.cc/4E66-SLRM>] (“Review of [precedent cited in *Hornbeck*] reveals an important pattern: whether a state’s constitution guarantees a ‘thorough and efficient,’ ‘adequate,’ or ‘basic’ education, its courts require more of state government than ‘at most’ an ‘effort’ to satisfy the constitutional right to education.”).

79. OHIO CONST. art. VI, § 2.

buildings or equipment.”⁸⁰ Fifty-six years later in *Board of Education v. Walter*, the court seemed to affirm this same principle.⁸¹ It hypothesized that, while not at issue in the case before it, a school district that “was receiving so little local and state revenue that the students were effectively being deprived of educational opportunity . . . would clearly not be thorough and efficient.”⁸² It was not until the *DeRolph* litigation in the 1990s, however, that the court affirmatively defined what a school district must provide in order to meet its constitutional obligation.⁸³

In *DeRolph I*, students, educators, and school districts challenged Ohio’s school-funding system, alleging that it failed to meet the minimal adequate education standard established by precedent.⁸⁴ The Supreme Court of Ohio ruled that a “thorough and efficient system of common schools includes facilities in good repair and the supplies, materials, and funds necessary to maintain these facilities in a safe manner.”⁸⁵ In a concurring opinion, Justice Douglas elaborated further on what a truly thorough and efficient district would look like.⁸⁶ In his view, “each district must be given school structures that are safe and conducive to learning, including the necessary fixtures, equipment and supplies that ensure thorough and efficient opportunity to learn.”⁸⁷

The Supreme Court of Ohio held that the abysmal conditions of some buildings, lack of basic instructional materials, overcrowded classrooms, severely limited curricula, and poor student performance on achievement tests led to one “inescapable conclusion—Ohio’s elementary and public schools are neither thorough nor efficient.”⁸⁸ The same deficiencies that disturbed the highest court in the birthplace of the “thorough and efficient” standard are unfortunately also present in the Baltimore City Public Schools System.⁸⁹

A significant portion of BCPSS facilities have been in poor or very poor condition since 1992.⁹⁰ Perhaps unsurprisingly, these “school facilities are, by most measures, the worst in Maryland.”⁹¹ They “cumulatively are more than 1000 years older than [the state] average,’ making them the oldest school facilities in the state.”⁹² This has

80. *Miller v. Korn*, 140 N.E. 773, 776 (Ohio 1923).

81. *Bd. of Educ. v. Walter*, 390 N.E.2d 813, 825 (Ohio 1979).

82. *Id.*

83. See generally *DeRolph v. State*, 1995 WL 557316 (Ohio Ct. App. 5th Dist. Aug. 30, 1995) (appeal from the trial decision); *DeRolph v. State (DeRolph I)*, 677 N.E.2d 733 (Ohio 1997) (the first Supreme Court of Ohio decision in this line of cases); *DeRolph v. State (DeRolph II)*, 728 N.E.2d 993, 1020-21 (Ohio 2000) (finding the State’s system of public school funding still violated the state constitution); *DeRolph v. State (DeRolph III)*, 754 N.E.2d 1184, 1200-01 (Ohio 2001) (prescribing specific legislative actions to bring an end to the litigation as a compromise decision); *DeRolph v. State (DeRolph IV)*, 780 N.E.2d 529, 530 (Ohio 2002) (vacating *DeRolph III* and affirming the demands of *DeRolph I* and *II*); *State ex rel. State v. Lewis*, 789 N.E.2d 195, 202 (Ohio 2003) (finding the school funding system remained unconstitutional but refusing to allow further intervention from the court).

84. *DeRolph I*, 677 N.E.2d at 734, 740.

85. *Id.* at 747.

86. *Id.* at 748 (Douglas, J., concurring).

87. *Id.*

88. *Id.* at 745.

89. Br. of Appellants, *supra* note 78, at 18-21.

90. *Id.* at 18 (citing *Bradford* Complaint, *supra* note 32, ¶ 105).

91. *Id.*

92. *Id.* (quoting Ex. 88 from Pls.’ Mot. Summ. J. at 4).

had a direct impact on students' ability to learn. System failures in these essential facilities caused "1.5 million hours, or 221,000 full school days, of lost instructional time" between 2014 and 2019.⁹³ Plaintiffs in *Bradford II* submitted photographic evidence that documented "facilities covered in mouse droppings; asbestos floor tiles; severely corroded, rusted, and molded pipes; exposed wires in classrooms; water intrusion damage; and walls covered in lead paint."⁹⁴

In *DeRolph II*, the Supreme Court of Ohio clarified that "thoroughness and efficiency embrace far more than simply adequate funding."⁹⁵ While it would be impossible to generate an "all-inclusive" list of "every possible component of a thorough and efficient system," the court articulated guiding principles.⁹⁶ A thorough system is one in which "each and every school district has enough funds to operate."⁹⁷ An "efficient system is one in which each and every school district in the state has an ample number of teachers, sound buildings that are in compliance with state fire and building codes, and equipment sufficient for all students to be afforded an educational opportunity."⁹⁸ Recognizing society's rapid technological advances, the court further opined that it is "crucial" for a school system to provide "[c]omputers for students above the fifth grade level . . . so that students nearing graduation will be computer-literate."⁹⁹ In subsequent *DeRolph III* and *IV* decisions—each solely evaluating remedies—the court reaffirmed that the necessary remedy requires that the state's public school children receive "an adequate education or one of high quality."¹⁰⁰

2. West Virginia

West Virginia's Constitution, like Maryland's, requires its legislature to "provide, by general law, for a thorough and efficient system of free schools."¹⁰¹ In interpreting what this responsibility entails, the West Virginia Supreme Court of Appeals relied on the understanding both of the original drafters of this provision—Ohio's 1851 constitutional delegates—and of courts in sister states with similar provisions.¹⁰² This searching review led the court to conclude that there could be "no doubt that excellence was the goal, rather than mediocrity; and that education of the public was intended to be a fundamental function of the state government."¹⁰³ The court did not simply set out a standard for lawmakers to decide how to achieve. It laid out a comprehensive set of requirements that schools must meet in order to fulfill this

93. *Id.* (citing Ex. 56(A) from Pls.' Mot. Summ. J. at 11, which contained "Appellant's expert's findings based upon data from Baltimore City Public Schools and the Statewide Facilities Assessment").

94. *Id.* at 18-19 (citing Ex. 49(A) from Pls.' Mot. Summ. J. at 186-301).

95. *DeRolph II*, 728 N.E.2d 993, 1001 (Ohio 2000).

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.* at 1021.

100. Sandra K. McKinley, *Part II. The Journey to Adequacy: The DeRolph Saga*, 30 J. EDUC. FIN. 321, 321 (2005).

101. W. VA. CONST. art. XII, § 1.

102. *Pauley v. Kelly*, 255 S.E.2d 859, 866 (W. Va. 1979).

103. *Id.* at 867.

obligation of excellence. To satisfy West Virginia's constitutional promise, its schools must:

develop[] in every child to his or her capacity of (1) literacy; (2) ability to add, subtract, multiply and divide numbers; (3) knowledge of government to the extent that the child will be equipped as a citizen to make informed choices among persons and issues that affect his own governance; (4) self-knowledge and knowledge of his or her total environment to allow the child to intelligently choose life work to know his or her options; (5) work-training and advanced academic training as the child may intelligently choose; (6) recreational pursuits; (7) interests in all creative arts, such as music, theatre, literature, and the visual arts; (8) social ethics, both behavioral and abstract, to facilitate compatibility with others in this society.¹⁰⁴

Baltimore City's poor performance on Maryland's educational assessments shows it does not cultivate adequate literacy, mathematical capabilities, knowledge of government, work or advanced academic training, creative interests, or social ethics for Baltimore City's children.¹⁰⁵ A district where, by the State's own measure, a small minority of elementary, middle, and high school students are proficient in English Language Arts or Math can hardly be said to be "develop[ing] every child to his or her capacity" in these areas.¹⁰⁶

The court added that, implicit in these standards, are "supportive services" such as "good physical facilities, instructional materials and personnel."¹⁰⁷ While no other state has been as specific or extensive in defining what a "thorough and efficient" system of education requires, West Virginia's detailed interpretation does reflect a common understanding that the obligation shared by itself, Ohio, and Maryland requires equipping students to succeed academically and professionally. A system of schools where students near high school graduation do not possess eighth-grade competencies¹⁰⁸ does not meet this standard.

3. New Jersey

While New Jersey adopted the "thorough and efficient" language after Maryland, the *Hornbeck* court still considered its interpretation persuasive as it fleshed out what this burden means.¹⁰⁹ New Jersey's constitution requires its legislature to "provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all children in the State between the ages of five and eighteen years."¹¹⁰ The New Jersey Supreme Court interpreted this language to mean that, among other things, "poorer disadvantaged students must be given a chance to be able to compete with relatively advantaged students."¹¹¹ Baltimore City children,

104. *Id.* at 877.

105. *See id.*; *infra* notes 154-55, 158-71.

106. *Pauley*, 255 S.E.2d at 877.

107. *Id.*

108. *Bradford* Complaint, *supra* note 32, ¶¶ 57-58.

109. *Hornbeck v. Somerset Cnty. Bd. of Educ.*, 458 A.2d 758, 779-80 (Md. 1983).

110. N.J. CONST. art. VIII, § 4, ¶ 1.

111. *Abbott v. Burke (Abbott II)*, 575 A.2d 359, 372 (N.J. 1990).

however, are not sharing in this promise of equal opportunity across income levels. Students in BCPSS are not receiving adequate training for higher education as they “significantly underperform on college entrance exams and advanced placement courses compared to students statewide.”¹¹² Leaving students unprepared for higher education also leaves them unable to compete with students in better resourced schools. As the court explains, such disparities in opportunity violate the “thorough and efficient” standard.¹¹³

In *Abbott v. Burke*, the “crumbling” school buildings, limited access to curriculum offerings, and pervasive inability of lower income districts to meet state academic standards demonstrate the State’s failure to provide a constitutionally adequate education for all students.¹¹⁴ New Jersey’s high court understood the state’s constitutional mandate to “mean[] more than teaching the skills needed to compete in the labor market, as critically important as that may be.”¹¹⁵ A thorough and efficient education “means being able to fulfill one’s role as a citizen, a role that encompasses far more than merely registering to vote.”¹¹⁶ It entails the “ability to participate fully in society, in the life of one’s community, the ability to appreciate music, art, and literature, and the ability to share all of that with friends.”¹¹⁷ This eloquent description of the State’s obligation contemplates far more than a bare bones education where students learn in decrepit facilities and perform below the State’s own educational targets.

4. Pennsylvania

Pennsylvania’s Constitution—also cited by the *Hornbeck* court to analyze Maryland’s own education standard—requires its General Assembly to “provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.”¹¹⁸ The Commonwealth Court of Pennsylvania in *William Penn School District v. Pennsylvania Department of Education* interpreted this to require that “every student [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.”¹¹⁹

5. South Dakota

While not discussed in the *Hornbeck* or *Bradford I* decisions, South Dakota’s interpretation of its educational duty helps clarify Maryland’s responsibilities. Like Maryland, South Dakota’s constitution provides that the legislature “shall secure a

112. Br. of Appellants, *supra* note 78, at 21 (citing Pls.’ Mot. Summ. J. at 16-17).

113. *Abbott II*, 575 A.2d at 372.

114. *Id.* at 395-97, 400.

115. *Id.* at 397.

116. *Id.*

117. *Id.* at 364.

118. PA. CONST. art. III, § 14.

119. *William Penn Sch. Dist. v. Pa. Dep’t of Educ.*, 294 A.3d 537, 886 (Pa. Commw. Ct. 2023) (emphasis in original).

thorough and efficient system of common schools throughout the state.”¹²⁰ The South Dakota Supreme Court, in *Davis v. State*, held that this right entitles all children to a “free, adequate, and quality public education.”¹²¹ Based on the language and intent of the framers, the court determined that this provision “guarantee[s] the children of South Dakota a constitutional right to an education that provides them with the opportunity to prepare for their future roles as citizens, participants in the political system, and competitors both economically and intellectually.”¹²² The promise of a “thorough and efficient system” of education necessarily excludes “a system that fails to educate all children or leaves pockets of inadequate conditions and achievement as a result of insufficient funding.”¹²³ The court included General William H.H. Beadle’s—one of the drafters of South Dakota’s constitution—description of an important purpose of public education.¹²⁴ He believed that the provision of public education was “the highest duty of the state,” and that “[t]he genius of the poorest must have equal chance with the opportunity of the rich.”¹²⁵ As Maryland shares South Dakota’s educational mandate, it should incorporate the spirit “embedded in the language” of both constitutions.¹²⁶ Given the relative poverty of Baltimore City,¹²⁷ Maryland lawmakers have a responsibility to realize their “highest duty”¹²⁸ and support BCPSS in providing equal educational opportunities to some of Maryland’s most vulnerable children.

B. States With “Basic” or “Adequate” Provisions

Bradford II concluded that the current state of the Baltimore City Public Schools System provides a basic education to its students.¹²⁹ However, when reviewing how states whose constitutions require “basic” or “adequate” systems of education understand this obligation, it is evident that Baltimore City Public Schools fall short of that lowered threshold. These states still require their legislatures to provide a system of education to students that “creates a meaningful opportunity for students to gain the knowledge necessary to participate, compete, and succeed as citizens in our modern society and economy.”¹³⁰

120. S.D. CONST. art. VIII, § 15.

121. *Davis v. State*, 804 N.W.2d 618, 627 (S.D. 2011).

122. *Id.* (emphasis omitted).

123. *Id.* at 626-27.

124. *Id.* at 622.

125. *Id.* (quoting OSCAR WILLIAM COURSEY, A COMPLETE BIOGRAPHICAL SKETCH OF GENERAL WILLIAM HENRY HARRISON BEADLE 87-91 (1913)).

126. *Id.* at 623.

127. MD. DEP’T OF PLAN., POVERTY RATES FOR MARYLAND’S JURISDICTIONS (2025) (citing U.S. CENSUS BUREAU, SAIPE STATE AND COUNTY ESTIMATES FOR 2023: MARYLAND (2025)), <https://planning.maryland.gov/MSDC/Documents/poverty/2023-SAIPE-Poverty.pdf> [<https://perma.cc/UDR3-U4JY>] (From 2013 to 2023, Baltimore City had the second highest poverty rate of all Maryland counties.).

128. *Davis*, 804 N.W.2d at 622.

129. *Bradford II*, No. 24-C-94-340058, slip op. at 18 (Cir. Ct. Balt. City Mar. 3, 2023), https://www.aclu-md.org/app/uploads/2023/03/2023_-_bradford_v_msbe_-_opinion.pdf [<https://perma.cc/P7SE-FNYY>].

130. Br. of Appellants, *supra* note 78, at 15 (collecting cases); see also *McDaniel v. Thomas*, 285 S.E.2d 156, 165 (Ga. 1981) (discussing the Georgia Constitution’s requirement that the State provide an “adequate” education); *Claremont Sch. Dist. v. Governor*, 703 A.2d 1353, 1359 (N.H. 1997) (discussing the New

1. Georgia

Georgia's Supreme Court held that even a "minimum" education "must provide each child with an opportunity to acquire the basic minimum skills necessary for the enjoyment of the rights of speech and of full participation in the political process."¹³¹ An adequate education, however, contemplates even more than this minimum standard.¹³² While the Georgia Supreme Court left the duty of fully defining an "adequate" education to the state's legislature, it opined that a constitutionally sufficient education "must be designed to produce individuals who can function in society."¹³³

2. New Hampshire

The Supreme Court of New Hampshire recognized that "[g]iven the complexities of our society today, the State's constitutional duty extends beyond mere reading, writing, and arithmetic. It also includes broad educational opportunities needed in today's society to prepare citizens for their role as participants and as potential competitors in today's marketplace of ideas."¹³⁴ The court also noted that an adequate education "is not a static concept removed from the demands of an evolving world."¹³⁵ Even twenty-six years ago, "[m]ere competence in the basics" was insufficient to "insure that this State's public school students are fully integrated into the world around them."¹³⁶ An adequate education requires "broad exposure to the social, economic, scientific, technological, and political realities of today's society" so that students can "compete, contribute, and flourish in the twenty-first century."¹³⁷

3. North Carolina

In *Leandro v. State*, the Supreme Court of North Carolina interpreted its constitution to require a "sound basic education."¹³⁸ An education that meets this threshold will provide the student with at least:

(1) sufficient ability to read, write, and speak the English language and a sufficient knowledge of fundamental mathematics and physical science to enable the student to function in a complex and rapidly changing society; (2) sufficient fundamental knowledge of geography, history, and basic economic and political systems to enable the student to make informed choices with regard to issues that affect the student personally or affect the student's community, state, and nation;

Hampshire Constitution's requirement that the State provide an "adequate" education); *Leandro v. State*, 488 S.E.2d 249, 255 (N. C. 1997) (discussing the North Carolina Constitution's requirement that the State provide a "sound basic education").

131. *McDaniel*, 285 S.E.2d at 165 (quoting *San Antonio Sch. Dist. v. Rodriguez*, 411 U.S. 1, 37 (1973)).

132. *Id.*

133. *Id.*

134. *Claremont Sch. Dist.*, 703 A.2d at 1359 (quoting *Claremont Sch. Dist. v. Governor*, 635 A.2d 1375, 1381 (N.H. 1993)).

135. *Id.*

136. *Id.*

137. *Id.*

138. *Leandro v. State*, 488 S.E.2d 249, 255 (N. C. 1997).

(3) sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education or vocational training; and (4) sufficient academic and vocational skills to enable the student to compete on an equal basis with others in further formal education or gainful employment in contemporary society.¹³⁹

Thus, a basic education requires that students develop sufficient skills in various key areas of schooling.

IV. *BRADFORD II* DOES NOT CORRECTLY INTERPRET MARYLAND'S CONSTITUTIONAL PROMISE OF A "THOROUGH AND EFFICIENT" EDUCATION

Maryland's constitution does not just bestow the right to a "basic" education in its text.¹⁴⁰ The intent of the people, as expressed by the state's binding document, is to provide a "thorough and efficient system of public schools,"¹⁴¹ for all of Maryland's children, regardless of income, race, or district. The original wordsmiths of this standard envisioned a system of excellence, not mediocrity or mere attempts with failing results.¹⁴² This conclusion is confirmed by the various courts, both in the provision's birthplace of Ohio and in the states that have adopted it since. While there are variations in the level of detail prescribed by the various courts, they share a core conviction that a "thorough and efficient" education requires safe and quality facilities, an education that meets contemporary standards regarding core subjects, and allows the child to be a competitive candidate in the labor market.¹⁴³

Maryland's educational mandate is "to provide an education that enables all students to become effective citizens, workers, and members of society."¹⁴⁴ When Baltimore City Public School students fail to receive the same quality of education being provided to the vast majority of other Maryland public school students, their ability to compete for employment—or higher education—against peers who received a properly funded education is significantly damaged. As New Jersey's Supreme Court held, students who are left at this competitive disadvantage for employment are not receiving a constitutionally sufficient education.¹⁴⁵ "It is clear that equal educational opportunity does not exist where one group of students is receiving a significantly poorer education than others."¹⁴⁶

139. *Id.*

140. MD. CONST. art. VIII, § 1.

141. *Id.*

142. *Pauley v. Kelly*, 255 S.E.2d 859, 867 (W. Va. 1979).

143. *DeRolph I*, 677 N.E.2d 733, 741 (Ohio 1997); *Abbott II*, 575 A.2d 359, 371-72 (N. J. 1990); *Pauley*, 255 S.E.2d at 877; *Davis v. State*, 804 N.W.2d 618, 627 (S.D. 2011).

144. *Leviton & Joseph*, *supra* note 75, at 1165.

145. *Robinson v. Cahill*, 303 A.2d 273, 296 (N.J. 1973) ("The Constitution's guarantee must be understood to embrace that educational opportunity which is needed in the contemporary setting to equip a child for his role as a citizen and as a competitor in the labor market."); *Abbott v. Burke (Abbott I)*, 495 A.2d 376, 390 (N.J. 1985) ("[A]fter comparing the education received by children in property-poor districts to that offered in property-rich districts, it appears that the disadvantaged children will not be able to compete in, and contribute to, the society entered by the relatively advantaged children.")

146. *Leviton & Joseph*, *supra* note 75, at 1169.

Despite the circuit court's holding to the contrary,¹⁴⁷ Maryland's precedent does not contradict this shared understanding of what a "thorough and efficient" education requires. *Hornbeck* did not reach the issue of educational adequacy, focusing instead on the funding challenge, and holding that "thorough and efficient" does not require mathematical uniformity in the budgets of all districts.¹⁴⁸ While *Bradford I* did not go to trial, the court's role in encouraging a settlement that would address funding and adequacy gaps indicates a recognition that an education so lacking in funds and oversight that it deprives the student of an adequate opportunity to learn is a violation of Maryland's Constitution.

As the consensus among other states with identical provisions demonstrates, "a constitutionally adequate education must enable students to succeed in contemporary society." This definition "is fully consistent with the requirement of both *Hornbeck* and *Bradford I* that Maryland must provide an adequate education as measured by contemporary educational standards."¹⁴⁹ While the circuit court reduces Maryland's promise of a "thorough and efficient" system of schools to one that entitles students to a mere basic education,¹⁵⁰ various courts have recognized that even a basic education must meet contemporary standards and allow students the opportunity to participate in society.¹⁵¹ Despite the circuit court's conclusion, the education provided by Baltimore City Public Schools is not one that can be called thorough, efficient, basic, or adequate.

Courts have repeatedly made clear what a thorough and efficient system is *not*. It is not forcing students to learn in crumbling and obsolescent school buildings or overcrowded classrooms.¹⁵² It is not a district lacking in teachers, curricula, or opportunities for honors and Advanced Placement courses.¹⁵³ It is also not a district where students are scoring poorly on achievement tests or are comparatively unprepared for the labor or higher education market due to insufficient technological training, rendering them unable to compete with more advantaged students.¹⁵⁴

BCPSS does not just fail to provide adequate facilities, it also fails to provide an adequate education to students as measured by objective indicators and Maryland's standards.¹⁵⁵ These objective indicators include performance scores, attendance rates, and graduation rates—three areas in which BCPSS performs far below state standards and averages.¹⁵⁶ When evaluated by the Maryland State Board of Education, Baltimore City Public Schools overwhelmingly fail.¹⁵⁷ Sixty percent of all schools in

147. *Bradford II*, No. 24-C-94-340058, slip op. at 18 (Cir. Ct. Balt. City Mar. 3, 2023), https://www.aclu-md.org/app/uploads/2023/03/2023_-_bradford_v_msbe_-_opinion.pdf [<https://perma.cc/P7SE-FNYY>].

148. *Hornbeck v. Somerset Cnty. Bd. of Educ.*, 458 A.2d 758, 780 (Md. 1983).

149. Br. of Appellants, *supra* note 78, at 16.

150. *Bradford II*, slip op. at 18 (quoting *Hornbeck*, 458 A.2d at 780).

151. See *supra* note 130.

152. *Abbott II*, 575 A.2d 359, 397 (N.J. 1990); *DeRolph I*, 677 N.E.2d 733, 741-44 (Ohio 1997).

153. *DeRolph I*, 677 N.E.2d at 741-44.

154. *Id.* at 744-45; *Abbott II*, 575 A.2d at 372 (N.J. 1990).

155. Br. of Appellants, *supra* note 78, at 20.

156. *Id.*

157. MD. STATE DEP'T OF EDUC., BALTIMORE CITY: 2024-2025 SCHOOL REPORT CARD 1-2 (2025), <https://reportcard.msde.maryland.gov/Graphs/#/ReportCards/ReportCardSchool/1/E/1/30/XXXX/2025>

Maryland that received one-star ratings are located within Baltimore.¹⁵⁸ Over ten percent of Baltimore City schools received only one star, and more than half of the city schools were only marginally better, scoring two out of five stars.¹⁵⁹

Performance scores in Baltimore City do not paint a hopeful picture. In a 2025 assessment of school performance,¹⁶⁰ the State reported that in math, only 11.7% of BCPSS fifth grade students,¹⁶¹ 5.4% of eighth grade students,¹⁶² and 11.6% of tenth grade students taking Algebra 1¹⁶³ were proficient. In English Language Arts, 21.5% of fifth grade students,¹⁶⁴ 30.7% of eighth grade students,¹⁶⁵ and 42.6% of tenth grade¹⁶⁶ students achieved proficiency by the State's standards.

[<https://perma.cc/3STA-GV32>] (measuring elementary, middle school, and high school performance in the following categories: Academic Achievement, Academic Progress, Progress in Achieving English Language Proficiency, and School Quality and Success). The report also measured high school performance in the same categories as well as Readiness for Post-Secondary Success. *Id.* Baltimore City's public schools failed each metric for 2024-2025 when evaluated against the State's annual targets. *Id.*

158. Elizabeth Worthington, *Baltimore Area Home to Highest and Lowest Rated Schools on Maryland Report Card*, WMAR-2 (Dec. 13, 2023, at 19:19), <https://www.wmar2news.com/homepage-showcase/baltimore-area-home-to-highest-and-lowest-rated-schools-on-maryland-report-card> [<https://perma.cc/9KJM-U3WE>].

159. *Id.*

160. In 2023, the Maryland State Board of Education administers the Maryland Comprehensive Assessment Program. This program encompasses state-mandated assessments intended to measure “student progress towards proficiency on the Maryland state content standards” and “how schools are performing.” MD. STATE DEP’T OF EDUC., END OF COURSE EXAMS: FREQUENTLY ASKED QUESTIONS 2025-2026, at 8 (2025) <https://marylandpublicschools.org/about/Documents/DAAIT/Assessment/MCAP/EOC-FAQs-A.pdf> [<https://perma.cc/F5NV-8MC9>]. A student’s score on this program places them into one of four performance levels: Beginning Learner (Performance Level 1), Developing Learner (Performance Level 2), Proficient Learner (Performance Level 3), or Distinguished Learner (Performance Level 4). MD. STATE DEP’T OF EDUC., MCAP ELA/MATH SCORE INTERPRETATION GUIDE FOR EDUCATORS 2 (2025) <https://support.mdassessments.com/resources/reporting/MCAP%20Spring%202025%20ELA%20Math%20Score%20Interpretation%20Guide.pdf> [<https://perma.cc/494Z-5XA5>]. “Students performing at levels 3 or 4 have demonstrated proficiency in the assessed content, readiness for the next grade level/course, and are likely on track for college and careers.” *Id.* Based on this scoring rubric, statements regarding student proficiency will combine the percentages of students who scored in Levels 3 or 4.

161. MD. STATE DEP’T OF EDUC., MATHEMATICS DATA (2025): BALTIMORE CITY: MATH 5 (2025), <https://reportcard.msde.maryland.gov/Graphs/#/Assessments/MathPerformance/5MAT/5/6/3/1/30/XXXX/2025> [<https://perma.cc/7LGF-9KY8>]. See *supra* note 160 for information on how performance was gauged.

162. MD. STATE DEP’T OF EDUC., MATHEMATICS DATA (2025): BALTIMORE CITY: MATH 8 (2025), <https://reportcard.msde.maryland.gov/Graphs/#/Assessments/MathPerformance/8MAT/8/6/3/1/30/XXXX/2025> [<https://perma.cc/V4L2-LVP8>]. See *supra* note 160 for information on how performance was gauged.

163. MD. STATE DEP’T OF EDUC., MATHEMATICS DATA (2025): BALTIMORE CITY: MATH - ALGEBRA 1 (2025), <https://reportcard.msde.maryland.gov/Graphs/#/Assessments/MathPerformance/UALG01/U/6/3/1/30/XXXX/2025> [<https://perma.cc/F587-5JZJ>]. See *supra* note 160 for information on how performance was gauged.

164. MD. STATE DEP’T OF EDUC., ENGLISH LANGUAGE ARTS DATA (2025): BALTIMORE CITY: ELA 5 (2025), <https://reportcard.msde.maryland.gov/Graphs/#/Assessments/ElasPerformance/5ELA/5/6/3/1/30/XXXX/2025> [<https://perma.cc/WC5U-ZTAR>]. See *supra* note 160 for information on how performance was gauged.

165. MD. STATE DEP’T OF EDUC., ENGLISH LANGUAGE ARTS DATA (2025): BALTIMORE CITY: ELA 8 (2025), <https://reportcard.msde.maryland.gov/Graphs/#/Assessments/ElasPerformance/8ELA/8/6/3/1/30/XXXX/2025> [<https://perma.cc/JTF2-P5YG>]. See *supra* note 160 for information on how performance was gauged.

166. MD. STATE DEP’T OF EDUC., ENGLISH LANGUAGE ARTS DATA (2025): BALTIMORE CITY: ENGLISH 10 (2025), <https://reportcard.msde.maryland.gov/Graphs/#/Assessments/ElasPerformance/10ELA/10/6/3/1/30/XXXX/2025> [<https://perma.cc/K692-6GQP>]. See *supra* note 160 for information on how performance was gauged.

Access to advanced placement classes is also “wildly uneven” across the city.¹⁶⁷ Nine high schools did not offer any of these courses and five high schools offered only one.¹⁶⁸ This dearth of placements disadvantages students, as even those enrolled in advanced placement courses who fail the exam are still about eighteen percent more likely to enroll in a four-year college.¹⁶⁹

BCPSS students also “significantly underperform on college entrance exams and advanced placement courses compared to students statewide.”¹⁷⁰ They also “enroll[] in two- or four-year colleges in their first year after graduation at substantially lower rates than graduates from the other school districts in Maryland.”¹⁷¹ Students also drop out at a rate more than twice that of the statewide average.¹⁷² As of 2024, BCPSS had a four-year graduation rate of 70.98%¹⁷³ and a drop-out rate of 19.07%.¹⁷⁴

Bradford II, even with this evidence, failed to grapple with what this truly means for any possibility of Maryland’s constitutional promise being a reality in Baltimore City. Relying on *Hornbeck*’s language about mathematical uniformity, the circuit court concluded that allowing “educational resources available in the poorer school districts [to be] inferior to those in the rich districts does not mean that there is insufficient funding.”¹⁷⁵ This ignores the central contention from the plaintiffs, which was not just a disparity in funding between districts, but that Baltimore City Schools are so underfunded that they are incapable of providing an adequate education by the State’s own measures. The circuit court, leaning on *Hornbeck*’s language on funding equality, concluded that its refusal to impose a requirement of uniform funding “explicitly recognizes that although a system may be imperfect, the Maryland constitution only requires an effort by the State to at most provide a basic education.”¹⁷⁶

167. Talia Richman, *Thousands of Baltimore Students Have Lacked Access to Advanced Placement. That’s About to Change.*, THE BALT. SUN (July 22, 2019, 11:26 ET), <https://www.baltimoresun.com/2019/07/22/thousands-of-baltimore-students-have-lacked-access-to-advanced-placement-thats-about-to-change/> [https://perma.cc/862G-HCJH].

168. *Id.*

169. Dillon Mullan, *Baltimore City School Board Votes to Increase Funding for AP, SAT Testing*, THE BALT. SUN (July 24, 2024, 17:19 ET), <https://www.baltimoresun.com/2024/07/24/baltimore-city-school-board-ap-sat-funding/> [https://perma.cc/8WJJ-JW8C].

170. Br. of Appellants, *supra* note 78, at 21.

171. *Id.*

172. *Compare* MD. STATE DEP’T OF EDUC., DROPOUT RATE DATA (2024): BALTIMORE CITY (2026), <https://reportcard.msde.maryland.gov/Graphs/#/Graduation/DropOut/1/6/3/1/30/XXXX/2024> [https://perma.cc/X4E4-MYFW] (showing a district-wide dropout rate of 19.07%), *with* MD. STATE DEP’T OF EDUC., DROPOUT RATE DATA (2024): MARYLAND STATE (2026), <https://reportcard.msde.maryland.gov/Graphs/#/Graduation/DropOut/1/6/3/1/99/XXXX/2024> [https://perma.cc/NV6X-JMH8] (showing a statewide dropout rate of 8.28%).

173. MD. STATE DEP’T OF EDUC., COHORT GRADUATION RATE DATA (2024): BALTIMORE CITY (2026), <https://reportcard.msde.maryland.gov/Graphs/#/Graduation/GradRate/1/6/3/1/30/XXXX/2024> [https://perma.cc/KV5B-U6EY].

174. MD. STATE DEP’T OF EDUC., DROPOUT RATE DATA (2024): BALTIMORE CITY (2026), <https://reportcard.msde.maryland.gov/Graphs/#/Graduation/DropOut/1/6/3/1/30/XXXX/2024> [https://perma.cc/X4E4-MYFW].

175. *Bradford II*, No. 24-C-94-340058, slip op. at 16 (Cir. Ct. Balt. City Mar. 3, 2023) (quoting *Hornbeck v. Somerset Cnty. Bd. of Educ.*, 458 A.2d 758, 780 (Md. 1983)), https://www.aclu-md.org/app/uploads/2023/03/2023_-_bradford_v_msbe_-_opinion.pdf [https://perma.cc/P7SE-FNYI].

176. *Id.* at 18 (citing *Hornbeck*, 458 A.2d at 776).

As seen, Maryland stands out among the states in interpreting a district as meeting a “basic” threshold despite decrepit facilities, high dropout rates, and widespread state achievement test failures.¹⁷⁷

Hornbeck briefly surveyed how courts in states with identical constitutional provisions interpreted what “thorough and efficient” means.¹⁷⁸ In light of the poor state of BCPSS’s facilities and academic performance, it is clear the district would fail to meet any of the State’s standards, including Maryland’s. Baltimore City has failed to cultivate adequate literacy, mathematical capabilities, knowledge of government, work or advanced academic training, creative interests, or social ethics for its children.¹⁷⁹ A district where, by the State’s own measure, students are failing to progress adequately in English Language Arts or Math¹⁸⁰ can hardly be said to “develop[] in every child to his or her capacity” in these areas.¹⁸¹

As held in *DeRolph I* and *II*, a thorough and efficient education cannot exist in districts that underperform on achievement tests or teach students in decrepit buildings.¹⁸² According to the *Bradford* findings and more recent data, each of these factors is present in BCPSS.¹⁸³

CONCLUSION

Maryland has a long history of excluding, displacing, and discriminating against its Black citizens. After quarantining Black families into Baltimore City and staunchly preventing their migration to surrounding counties, Maryland now also refuses to provide adequate funding to at least provide Black children in the city with a proper education. Baltimore City Public Schools have seen decades of low achievement scores and high dropout rates. They have seen repeated litigation over the same issue and yet no tangible solutions. It is time for a recognition that the rights enshrined in the state’s constitution truly extend to all Marylanders. Baltimore City’s children deserve a thorough and efficient education, and after a legacy of suppressing opportunity in the city, Maryland is long overdue in delivering it.

177. *Contrast id.* (holding that a district provided a “basic” education despite decrepit facilities, high dropout rates, and widespread state achievement test failures), *with supra* Section III.B.1 (discussing Georgia’s requirement for an “adequate” education), *and supra* Section III.B.2 (discussing New Hampshire’s requirement for an “adequate” education), *and supra* Section III.B.3 (discussing North Carolina’s requirement for a “sound basic education”).

178. *Hornbeck*, 458 A.2d at 777, 779-80.

179. *Pauley v. Kelly*, 255 S.E.2d 859, 877 (W. Va. 1979); *see supra* notes 157-71 and accompanying text.

180. *See supra* notes 157-66 and accompanying text.

181. *Pauley*, 255 S.E.2d at 877.

182. *DeRolph I*, 677 N.E.2d 733, 741, 744-45 (Ohio 1997); *DeRolph II*, 728 N.E.2d 993, 1001 (Ohio 2000).

183. Br. of Appellants, *supra* note 78, at 18-20; *see supra* notes 157-71 and accompanying text.