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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CHESTER UPLAND SCHOOL DISTRICT;
BOARD OF SCHOOL DIRECTORS OF THE
CHESTER UPLAND SCHOOL DISTRICT;
RESIDENT OF THE CHESTER UPLAND
SCHOOL DISTRICT; WANDA MANN,
TAXPAYER OF THE CHESTER UPLAND
SCHOOL DISTRICT; E. W., PARENT OF
SPECIAL EDUCATION STUDENT; and
DELORES SHARP, PARENT OF REGULAR
EDUCATION STUDENT

Plaintiffs

v.

COMMONWEALTH OF PENNSYLVANIA;
DEPARTMENT OF EDUCATION OF THE
COMMONWEALTH OF PENNSYLVANIA;
RONALD TOMALIS, SECRETARY OF
EDUCATION OF THE COMMONWEALTH
OF PENNSYLVANIA; JOSEPH P. SCARNATI III,
PRESIDENT PRO TEMPORE OF THE SENATE
OF THE COMMONWEALTH OF
PENNSYLVANIA IN HIS OFFICIAL CAPACITY;;
SAMUEL H. SMITH, SPEAKER OF THE HOUSE
OF REPRESENTATIVES OF THE
COMMONWEALTH OF PENNSYLVANIA
IN HIS OFFICIAL CAPACITY; TOM CORBETT,
GOVERNOR OF THE COMMONWEALTH OF
PENNSYLVANIA IN HIS OFFICIAL CAPACITY:

Defendants

NO. 12-

12

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**AFFIDAVITS IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Attached hereto and incorporated are the affidavits of Dr. Thomas Persing and Mr. Herbert Schectman in support of the Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction.

Respectfully submitted,

Leo A. Hackett

Attorney for Plaintiffs

4. The School District's reduction in state funding for education for the 2011-2012 school year was one of the largest reduction in subsidies to a school district in the state based upon a percentage of its budget.

5. These reductions caused the School District to furlough 115 teachers and 84 support staff, or 28% percent of existing staff, elimination of educational programs, increase in class size from approximately 20 students per class to classes with 35 or more students, and consolidation schools.

6. The reduction in state funding for education for the 2011-2012 school year adversely impacted educational programming for minority and disabled students in the School District.

7. The School District relies primarily upon state and federal funding for the operation of the School District by reason of the economic conditions that exist in the City of Chester. State and federal funding comprises approximately 79% percent of the School District revenues.

8. The School District is the most heavily taxed School District in Delaware County based upon ability to pay, and is annually one of the highest taxed school districts in the Commonwealth of Pennsylvania. More than 50% percent of the assessed properties in the School District are exempt from real estate taxes including major exempt organizations such as Crozer Chester Medical Center, Widener University, Harrah's Race Track & Casino, PPL Park, and the Riverwalk Office Building.

9. Historically, delinquent taxes in the School District are annually approximately 29% percentage of taxes assessed. Many of the properties in the School

District which accumulated delinquent taxes do not sell at delinquent tax sales, and raising tax levies as in the past merely increases the delinquency rate.

10. The charter schools are funded from monies of the School District. The Pennsylvania Charter School Law dictates the funds to be transferred by the School District to charter schools are based upon a dollar amount for each regular and special education student attending a charter school. For 2011-2012 the amount transferred for each regular education student is \$9,858.00 and for each special education student is \$24,500.00. Forty-Three Million (\$43,000,000.00) Dollars (44.8%) of the School District's budgeted revenues of \$96,000,000.00 for the 2011-2012 school year go to charter schools.

11. For the 2011-2012 fiscal year, the \$23,000,000.00 reduction in funding to the School District was **not** accompanied by a reduction in the formula for funding charter schools as a result of which the charter schools in the School District were funded for the 2011-2012 fiscal year as though the School District's budget was still at \$113,000,000.00 rather than the actual \$96,000,000.00 budget.

12. The Commonwealth of Pennsylvania requires the School District to fund special education in charter schools at an annual rate of \$14,670.00 per student while at the same time the Commonwealth of Pennsylvania provides funding to the School District for special education students at the rate of \$3,604.90 per student.

13. In the Fall of 2011, in order to comply with the educational requirements of the Commonwealth of Pennsylvania, the School District recalled from furlough a number of teachers to provide educational services to students including students with

disabilities. (The original professional staff furloughs were 171, the recalls resulted in net furloughs of 115 professional staff).

14. As a result of the reductions of revenues to the School District and the cost of compliance with state and federal laws for educational programs for students of the School District, the School District is experiencing a cash-flow crisis which will result in the inability of the School District to meet its payroll and other costs of the operation beginning on January 18, 2012 and continuing thereafter. This inability to pay salaries and operating expenses will cause the closing of the schools in the School District and the denial of services to regular and special education students.

15. As a result of the reduction in the state subsidies to the School District and the cost of providing the mandated education program, the School District has not been able to pay to charter schools the full monthly amount required by the Charter School Law. As a result of the inability to make payment to the charter schools, the Department of Education and the Commonwealth of Pennsylvania, at the request of the charter schools, has been withholding funds from the School District's subsidy and making payments directly to the charter schools.

16. During the month of December 2011 the subsidy scheduled to be paid by the Commonwealth of Pennsylvania to the School District was in the amount of approximately \$7,948,004.00. The Secretary has withheld this entire amount to pay to the charter school(s) and others. Consequently, none of the December subsidy has been paid to the Chester Upland School District. This subsidy diversion from January to June 2012 will be in the amount of \$36,304,325.00.

In addition, the Department of Education has advised the School District that it has or intends to deduct from subsidies owing to the School District which are essential for the continued operation of the District during the school year monies to pay charter schools and to repay advances from the Department of Education to the School District. The repayment of these advances \$8,700,000.00 could be done at the end of the school year from the June 2012 School District subsidy thus assisting the School District to remain in operation.

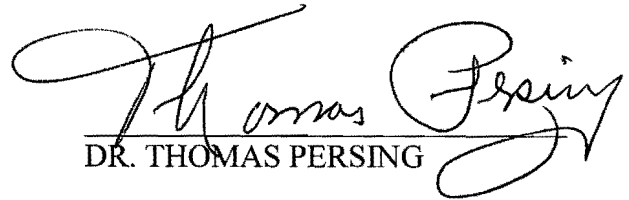
In addition, to the repayment to the School District of the \$8,700,000.00 already recouped by PDE the School District needs approximately \$12,000,000.00 to cover the cost of education through June 2012.

17. As a result of this diversion of School District subsidies the charter schools will be able to pay their staff salaries and operating cost while at the same time the School District will not be able to meet similar expenses with the result School District students will no longer be receiving an education.

18. This diversion of School District subsidies will prevent the School District from operating the schools of the District, paying salaries and compensation to teachers and support staff, purchasing supplies and material, and paying the ongoing operating expenses of the District, including utilities.

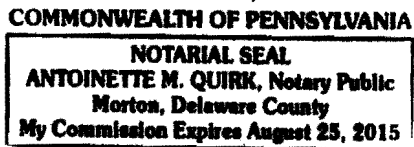
19. The Delaware County Intermediate Unit ("DCIU") has notified the School District of the cancellation of the contract to provide special education programs and services to students in the School District.

20. Seniors in the School District will not have sufficient credits to graduate in June 2012, and will not have information available for college applications or funds for college tuition.


DR. THOMAS PERSING

Sworn to and subscribed
before me this 12 day
of JANUARY, 2012.


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substantially over estimated revenues in the amount of \$6,250,000. This included Educational Empowerment funds and DCED grants at a time when the Secretary of Education knew that the Education Empowerment grants were about to expire. This reduced revenue to the School District of \$4,500,000 as well as Department of Economic and Development grants.

6. The School District's 2010-2011 budget approved by the Secretary of Education as Chairman of the Education Empowerment Board projected reductions in School District's staffing and programs; however, such reductions in force were not implemented by the Education Empowerment Board when it adopted the 2010-2011 budget on June 28, 2010.

7. During the 2010-2011 school year the elected Board of School Directors, after discovering these needed savings, implemented reductions including the elimination of administration positions, the furlough or non-replacement of teachers, the elimination of the Reading Recovery staff, the reduction of alternative school programming, the elimination of a staff attorney, and the elimination or reduction of secretaries, supplies and the book purchases (a total reduction of \$2,090,000).

8. During 2011-2012 the School District requested the Secretary to permit the School District to fund the debt that had been inherited by the School District and the Elected Board of School Directors by the State Boards governing the School District since 1994 as well as the Secretary of Education as Receiver; however, the Secretary of Education refused and denied to the School District the permission to fund this debt through a proposed bond issue. This funding would have provided a financial base for

the School District to avoid the financial/cash-flow crisis that presently is confronting the School District.

9. During the fiscal years 2006 to 2011, the Commonwealth of Pennsylvania, through its appointed Education Empowerment Board, and the Secretary of Education as Chairman of the Education Empowerment Board increased the budget of the Chester Upland School District from \$85,000,000 to \$113,000,000; increased the number of employees in the School District from approximately 590 employees to 735 employees while at the same time the enrollment in the School District was declining from 4,609 to 3,717.

10. Funds to implement these expenditures came from Education Empowerment Funds, subsidies to support payments to charter schools, extraordinary payment and subsidies from state funds, Department of Community and Economic Development grants; funds from the School District's "Operating Reserve Fund" in the amount of approximately \$3,500,000, as well as use of the School District's general fund balance of approximately \$9,000,000.

11. The Secretary as the Receiver and Chairman of the Education Empowerment Board authorized and approved the over expending of the 2009-2010 School District budget in the amount of \$2,800,000, failed to pay obligations to the Delaware County Intermediate Unit of approximately \$962,000, and failed to make payments to the Pennsylvania State Employee Retirement system for pension contributions in the amount of approximately \$364,000.

12. At the end of the 2010-2011 school year the Commonwealth of Pennsylvania advanced \$8,700,000 to the School District needed to fund charter schools \$5,200,000 and pay School District salaries \$3,500,000.

13. For the 2011-2012 fiscal year, federal and state revenues to the School District were decreased by more than \$23,000,000.

14. During the 2011-2012 school year prior to filing this action, the Secretary of Education withheld \$8,700,000.00 from School District subsidies to repay the June advance from PDE. This was done at a time when PDE knew the School District was in a cash-flow crisis and in danger of not being able to make salary payments.

15. The School District relies primarily upon state and federal funding for the operation of the School District by reason of the economic conditions that exist in the City of Chester. State and federal funding comprises approximately 79% percent of the School District revenues.

16. Historically, delinquent taxes in the School District are annually approximately 29% percentage of taxes assessed. Many of the properties in the School District which accumulated delinquent taxes do not sell at delinquent tax sales, and raising tax levies as in the past merely increases the delinquency rate.

17. The charter schools are funded from monies of the School District. The Pennsylvania Charter School Law dictates the funds to be transferred by the School District to charter schools are based upon a dollar amount for each regular and special education student attending a charter school. For 2011-2012 the amount transferred for each regular education student is \$9,858. and for each special education student is

\$24,500. Forty-Three Million (\$43,000,000) Dollars (44.8%) of the School District's budgeted revenues of \$96,000,000 for the 2011-2012 school year go to charter schools.

18. The Commonwealth of Pennsylvania requires the School District to fund special education in charter schools at an annual rate of \$14,670 per student (in addition to the regular education funding of \$9,858 per student) while at the same time the Commonwealth of Pennsylvania provides funding to the School District for special education students at the rate of \$3,600 per student.


HERBERT SCHECTMAN

Sworn to and subscribed
before me this 12th day
of JANUARY, 2012.


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