COURT OF APPEALS OF THE STATE OF NEW YORK

CAMPAIGN FOR FISCAL EQUITY, INC. et al.,

Plaintiffs-Appellants,

-against-

THE STATE OF NEW YORK, et al,.

Defendants-Respondents.

N.Y. County
Index No. 111070/93

BRIEF AMICI CURIAE SUBMITTED ON BEHALF OF THE BLACK, PUERTO RICAN AND HISPANIC LEGISLATIVE CAUCUS, THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, CONGRESSMAN GREGORY W. MEEKS, CONGRESSMAN MAJOR R. OWENS, CONGRESSMAN CHARLES B. RANGEL, STATE SENATOR TOBY ANN STAVISKY, STATE ASSEMBLYMEMBER JAMES F. BRENNAN, STATE ASSEMBLYMEMBER MICHAEL GIANARIS, STATE ASSEMBLYWOMAN RHODA S. JACOBS, STATE ASSEMBLYMAN JEFFREY KLEIN, STATE ASSEMBLYMAN IVAN C. LAFAYETTE, STATE ASSEMBLYMAN JOHN W. LAVELLE, STATE ASSEMBLYMEMBER JOHN J. MCENENY, STATE ASSEMBLYMAN BRIAN M. MCLAUGHLIN, STATE ASSEMBLYMAN PETER M. RIVERA, NEW YORK CITY COMPTROLLER WILLIAM C. THOMPSON, JR., AND MANHATTAN BOROUGH PRESIDENT C. VIRGINIA FIELDS

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INTRODUCTION

After a seven month trial at which more than 70 witnesses testified and over 4000 documents were entered into evidence, Judge Leland DeGrasse issued a thorough and thoughtful decision upholding the Campaign for Fiscal Equity plaintiffs' challenge to New York State's public school finance system under both the State Constitution and the Department of Education's implementing regulations for Title VI of the Civil Rights Act of 1964. See Campaign for Fiscal Equity v. State, 719 N.Y.S.2d 475 (Sup. Ct. N.Y. County 2001) ("CFE II"). However, despite overwhelming evidence that the State has failed to provide the children of New York City with an opportunity for a sound basic education, the Appellate Division overturned that trial court decision. See Campaign for Fiscal Equity v. State, 295 A.D.2d 1 (1st Dep't 2002) ("CFE III").

Amici curiae, the New York State Black, Puerto Rican and Hispanic Legislative Caucus, the National Association for the Advancement of Colored People, Congressman Gregory W. Meeks, Congressman Major R. Owens, Congressman Charles B. Rangel, State Senator Toby Ann Stavisky, State Assemblymember James F. Brennan, State Assemblymember Michael Gianaris, State Assemblywoman Rhoda S. Jacobs, State Assemblyman Jeffrey Klein, State Assemblyman Ivan C. Lafayette, State Assemblyman John W. Lavelle, State Assemblymember John J. McEneny, State Assemblyman

Brian M. McLaughlin, State Assemblyman Peter M. Rivera, New York City Comptroller William C. Thompson, Jr., and Manhattan Borough President C. Virginia Fields, urge this court to reverse the Appellate Division decision for two reasons. First, New York State's allocation of aid for public education to New York City violates the Education Article of the New York State constitution and Title VI's implementing regulations. Second, judicial intervention is appropriate and necessary to redress the longstanding racial inequities in New York State's public school finance scheme. As this Court held in 1995, the New York constitution requires the State to provide "the physical facilities and pedagogical services and resources" necessary to give all of the children of the state the opportunity to acquire "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." Campaign for Fiscal Equity, Inc. v. State, 86 N.Y.2d 307, 316 (1995) ("CFE I"). This Court must ensure that the State fulfills that constitutional obligation to its youngest citizens.

ARGUMENT

I. NEW YORK STATE'S ALLOCATION OF AID FOR PUBLIC EDUCATION TO NEW YORK CITY VIOLATES THE EDUCATION ARTICLE OF THE NEW YORK STATE CONSTITUTION AND THE IMPLEMENTING REGULATIONS FOR TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

A. The Education Article of the New York State Constitution

The New York State Constitution mandates that "[t]he Legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated." N.Y. Const. Art. XI, § 1. The State has attempted to fulfill that obligation by allocating aid to each of the school districts in New York in accordance with almost fifty different funding formulas that purport to apportion that aid inversely to school district wealth and according to student need. This convoluted funding scheme does not serve the State's objectives, and, in addition, has a disparate racial impact on the minority children of New York State – 73% of whom are educated in New York City. Accordingly, the trial court correctly found that the State's public school finance scheme violates both the Education Article of the New York State constitution and the implementing regulations of Title VI of the Civil Rights Act of 1964.[1] See CFE II, 719 N.Y.S.2d at 540 and 549.

[1] New York State's public school funding scheme falls within the mandate of Title VI because the State Education Department accepts federal money to support public education. See CFE I, 86 N.Y.2d at 324.

Stunningly, the Appellate Division reversed on the grounds that the New York State constitution does not entitle the children of this state the opportunity for a high school education. That court held that "the evidence at trial established that the skills required to enable a person to obtain employment, vote, and serve on a jury, are imparted between grades 8 and 9." CFE III, 295 A.D.2d at 8. The Appellate Division acknowledged that an 8th or 9th grade education is not likely to prepare anyone for anything other than minimum wage employment, but it dismissed that fact saying: "[i]t cannot be said . . . that a person who is engaged in a 'low-level service job' is not a valuable, productive member of society. . . . Society needs workers in all levels of jobs, the majority of which may very well be low level." Id.

To put the matter starkly, the Appellate Division held that if the public schools that educate the vast majority of the children of color in New York State function just well enough to qualify those children for menial jobs where they have little to no hope of pulling themselves up by their bootstraps and acquiring political and economic power – if those schools function just well enough to qualify those children for jobs in which they will serve the rest of the citizens of this state – the constitution of this great state has nothing to say about it. That holding cannot stand.

This court should reverse the Appellate Division's decision and adopt plaintiffs' proposed standard which would guarantee all of the children of New York State "the opportunity to obtain an adequate high school education, one that prepares them for competitive employment and to function as capable and productive civic participants." App.'s Br. 22 (Jan. 31, 2003).

B. The U.S. Department of Education Implementing Regulations for Title VI

The Civil Rights Act of 1964 is arguably the most influential Federal civil rights statute ever enacted. That statute vastly improved the social, political and economic fortunes of every person of color in the United States by prohibiting racial discrimination in a broad spectrum of areas – including public accommodations, private employment, and programs or activities receiving federal funds. Congress enacted Title VI of the 1964 Act "to make sure that funds of the United States [were] not used to support racial discrimination." 110 Cong. Rec. 6544 (1964) (Comments of Senator Humphrey). To match that far-reaching goal, Congress used broadly inclusive language in the substantive provision of that portion of the civil rights statute: "[n]o person in the United States shall, on grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to

discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d.

While the Supreme Court has held that Title VI itself prohibits only intentional racial discrimination, it has also determined that federal agencies have the authority to promulgate regulations that prohibit facially neutral conduct that has a racially adverse impact. See Alexander v. Sandoval, 532 U.S. 275, 281 (2001) (assuming for purposes of deciding the case that "regulations promulgated under § 602 of Title VI may validly proscribe activities that have a disparate impact on racial groups, even though such activities are permissible under § 601."); Guardians Ass'n v. Civil Serv. Comm'n of the City of N.Y., 463 U.S. 582, 593, 624 n.15, 644-45 (1983) (Title VI grants federal agencies the authority to issue regulations incorporating a disparate impact standard); CFE I, 86 N.Y.2d at 322 ("Under title VI's implementing regulations, proof of discriminatory intent is not a prerequisite to a private cause of action against governmental recipients of Federal funds."). The U.S. Department of Education's implementing regulations for Title VI, for example, explicitly prohibit recipients of federal funds from "utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin . . . ." 34 C.F.R. § 100.3(b)(2) (emphasis added).

Therefore, in order to show that the State has violated Title VI's implementing regulations, plaintiffs only need to prove that the challenged practice has a disproportionate impact on racial minorities that cannot be justified as an educational necessity.[2] See Groves v. Ala. State Bd. of Educ., 776 F. Supp. 1518, 1523 (M.D. Ala. 1991) ("redress is available for 'facially neutral actions having an unjustifiable disparate impact on minorities'") (citation omitted). As New York State's allocation of state aid for public education to New York City disparately impacts the vast majority of the students of color in the State and is not educationally necessary it violates the Department of Education's Title VI implementing regulations.

1. New York State's Public School Funding Scheme Is Racially Inequitable

The members of the New York State Black, Puerto Rican and Hispanic Legislative Caucus, the National Association for the Advancement of Colored People, Congressman Gregory W. Meeks,

[2] It remains an open question whether the Campaign for Fiscal Equity plaintiffs have the legal authority to enforce Title VI's implementing regulations through 42 U.S.C. § 1983 in light of the Supreme Court's decision in Gonzaga University v. Doe, 536 U.S. 273 (2002). Compare Robinson v. Kansas, 295 F.3d 1183, 1187 (10th Cir. 2002) ("Disparate impact claims may still be brought against state officials for prospective injunctive relief through an action under 42 U.S.C. § 1983 to enforce section 602 regulations.") and Rolland v. Romney, 318 F.3d 42, 51-54 (1st Cir. 2003) (enforcing amendments to the Medicaid statute through section 1983 after Gonzaga), with Ceaser v. Pataki, No. Civ. 8532 (LMM), 2002 WL 472271 (S.D.N.Y. Mar. 26, 2002), appeal filed (section 1983 claim cannot be brought to enforce Title VI implementing regulations). However, based on the facts that were proven at trial, it is abundantly clear that New York State is in violation of its obligations under those regulations. See infra at 7-14. This Court should take the State's blatant infraction of federal law into account as it resolves this litigation.

Congressman Major R. Owens, Congressman Charles B. Rangel, State Senator Toby Ann Stavisky, State Assemblymember James F. Brennan, State Assemblymember Michael Gianaris, State Assemblywoman Rhoda S. Jacobs, State Assemblyman Jeffrey Klein, State Assemblyman Ivan C. Lafayette, State Assemblyman John W. Lavelle, State Assemblymember John J. McEneny, State Assemblyman Brian M. McLaughlin, State Assemblyman Peter M. Rivera, New York City Comptroller William C. Thompson, Jr., and Manhattan Borough President C. Virginia Fields have long contended that New York State unfairly deprives its youngest minority citizens of an equal – and an adequate – education by allocating less education aid to New York City than to other similarly situated school districts. This state of affairs violates the implementing regulations of Title VI.

In the Caucus' annual analyses of the Governor's Executive Budget, in legislative debates, in conversations with their constituents, and in other public fora, Caucus members have consistently argued that the State's method of funding public education has created:

> a wealthy school districts system that is outside the urban areas, primarily non-minority, and [gives] less money and a less quality system in the urban centers, primarily the school districts . . . which are primarily minority population, black, African-American

> children, Puerto Rican children, Hispanic children, Latin children, children from various other parts of the world that are centered in the urban areas in the state of New York.

New York State Senate Floor Debate at 5117 (May 18, 1990) (statement of Sen. Velmanette Montgomery (Dem, Brooklyn)) (Morgan Aff., Ex. C). See also New York State Black and Puerto Rican Legislative Caucus, Budget Equity: An Alternative to the Governor's Executive Budget for 1991-92 35 (Feb. 16, 1991) ("Even though the City has one of the highest tax burdens in the nation, the average operating expense per pupil in New York City lags far below that of other school districts in the region and indeed is significantly below the state average. . . . This system is entirely unjust and must be changed.") (Morgan Aff., Ex. D). Indeed, the members of the Caucus have argued that the State's funding scheme is largely to blame for the high rates of educational failure among minority children in the City:

> As we read the newspaper accounts of our children failing and we worry about why they are failing, very often the reason is not that the teachers are not teaching and the board is not organizing their classrooms correctly, very often the issue is that there is inadequate funding for those children as compared to other children in New York State.

Barbara M. Clark, Assembly Update with Assemblywoman Barbara Clark (June 22, 1999). The State budget, Caucus members argue, "sends a direct message to our African-American and Latino youth. That message is that the state of New York will not guarantee our youth quality education." Budget Equity V: Preliminary Analysis of the Governor's Executive Budget for 1996-97 5 (Feb. 17, 1996) (Morgan Aff., Ex. E).

The evidence presented at trial in this case confirmed that the New York State public school funding scheme is racially inequitable. The trial court based its finding of disparate racial impact on a showing that "from 1994-95 to 1999-2000, New York City has consistently received less total State aid than its percentage share of enrolled students. In those years, New York has approximately 37% of the State's enrolled students and has received a percentage of total State aid ranging from 33.98% to 35.65%." CFE II, 719 N.Y.S.2d at 543. As 73% of the State's Black, Latino, Asian-American and American Indian children attend public school in New York City; and 84% of City public students are members of minority groups, that shortfall in State education funding to New York City hits minority students particularly hard. Id. at 542. Moreover, plaintiffs buttressed their evidence of racially disparate per capita funding with a regression analysis showing that "minority students receive less State aid as their overall concentration increases in a

particular district." Id. at 546. On the basis of those statistics, the trial court correctly held that plaintiffs established a prima facie showing that the New York State public school funding scheme allocates less state aid for education to City public school students than to other similarly situated students.[3]

The trial court also correctly determined that the inequities caused by the State's public school funding scheme have a profound effect on the quality of teaching and learning in public schools in New York City. Judge DeGrasse held that "money is a crucial determinant of educational quality, and that receipt of less educational funding by minority students is an adverse disparate impact within the purview of DOE's Title VI regulations." CFE II, 719 N.Y.S.2d at 541, 520-40. The trial courts conclusion reflects the modern trend: "a significant

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[3] This case closely resembles Meek v. Martinez, 724 F. Supp. 888 (S.D. Fla. 1987), in which plaintiffs established a prima facie case of racial discrimination under Title VI by showing that the formula used by defendant to allocate funds under the Older Americans Act disparately impacted racial and/or ethnic minorities in Florida. Because the distribution formula in that case allocated funds to districts rather than to individuals, the Meek court examined each element of that formula to determine which elements reduced the relative allocation to districts with larger percentages of minority recipients. See id. at 896. The court also considered the bottom line: the district with the largest number and highest percentage of minority recipients was projected to receive the largest funding cuts under the challenged formula. Id. at 895-96. Based on those facts, the court held that the challenged distribution formula "result[ed] in a substantially adverse racially disparate impact on districts with a relatively high percentage of minority residents." Id. at 906. See also Denise C. Morgan, *The New School Finance Litigation*, 96 Nw. U. L. Rev. 99, 173-87 (2001) (describing plaintiffs' and defendants' burdens of proof in Title VI cases).

majority of the courts that have explicitly considered the question in recent years have concluded that increased educational resources, if properly deployed, can have a significant and lasting effect on student performance." Denise C. Morgan, *The New School Finance Litigation*, 96 Nw. U. L. Rev. 99, 179 (2001) (analyzing state school finance cases since 1989) (Morgan Aff., Ex. F).

The Appellate Division opinion does not contradict any of the trial court's holdings concerning the racial inequity in the New York State school funding system. In fact, that court agreed that the New York City public schools compare unfavorably to those in the rest of the state with respect to the provision of instrumentalities of learning and the qualifications of teachers. See CFE III, 295 A.D.2d at 12-13 (citing the trial court holdings that "the average number of books per student in the City's schools lags behind that of the rest of the State, and that the State allocates only $4 per student for library materials," and that "[a]s of the 1997-1998 academic year, 31.1% of City public school teachers had failed the basic certification test (the Liberal Arts and Sciences Test or LAST) at least once, and the mean score for first time takers was 236.3 (on a test where 220 is passing). Outside the City, 4.7% of public school teachers had failed it once and had a mean first time score of 261.6").

2. The State Failed to Justify the Disparate Racial Impact of its Public School Funding Scheme

In addition to being racially inequitable, New York State's public school funding scheme is not educationally justifiable. Rather than reflecting a careful balance of competing educational policy concerns, the State's allocation of funding for public schools is driven by political manipulations.

On numerous occasions, H. Carl McCall, the former State Comptroller, has acknowledged that the funding formula is not guided by educational policy goals: "the changes to the aid formulas are designed to effect a bottom line aid distribution meeting political concerns. The changes are not only technically obscure, but also largely bereft of any theoretical basis." H. Carl McCall, School Finance Issues In the 1998-99 Enacted Budget 2 (June 1998) (Morgan Aff., Ex. G). Because they are generated by political concerns, the State's school funding formulas do not fairly respond to either district wealth or to student need. Indeed, "the distribution mechanics [in the school funding formula] now involve a complex amalgamation of formula factors, many of which bear no rational relationship to any describable state aid goal." H. Carl McCall, School Finance Reform—A Discussion Paper 10 (October 1995) (emphasis added) (Morgan Aff., Ex. H). Other elected officials have been equally blunt in their indictment of New York State's method of funding

public education. The former Chair of the Assembly Education Committee (1975-83), the late Senator Leonard P. Stavisky, described the State's funding scheme as "a mindless grab bag that has no rhyme, no reason, no logic and no equity. This is a denial of educational opportunity." New York State Senate Floor Debate at 5081 (May 18, 1990)(statement of Sen. Leonard P. Stavisky, (D-L, Brooklyn)) (Morgan Aff., Ex. I).

The trial court agreed "that New York City does not receive State aid commensurate with the needs of its students and that it in fact receives less State aid than districts with similar student need." CFE II, 719 N.Y.S.2d at 547. The court's conclusion is unsurprising given that it found that the primary function of New York State's school funding formula is to obscure the State's real decision-making process. The court determined that:

> any annual increase in State aid has historically been divided without reference to the formulas. The evidence at trial demonstrated that the formulas and grant categories are not allowed to operate neutrally but rather are manipulated during the State's annual budget negotiations by State officials to produce consistent funding allocations of aid increases among school districts around the State. . . . State budget documents reflect that New York City receives a

> fixed percentage share of any annual increase in State aid for education. The target has been 38.86%, and the State has hit or come very close to this percentage over the last 13 years. . . . It is inconceivable that this recurring percentage share could randomly recur year after year.

CFE II, 719 N.Y.S.2d at 533-34. Judge DeGrasse correctly held that the State failed to satisfy its burden on rebuttal. The New York State public school funding scheme cannot be justified by the State's educational policy goals because it is the product of brute political force – not of reasoned deliberation. Accordingly, amici urge this Court to reverse the Appellate Division decision which members of the Council of Black Elected Democrats have characterized as "straight from an era long since past when racism, segregation and inequality ruled the day." Statement of the NYS Council of Black Elected Officials (June 29, 2002) (Morgan Aff., Ex. J).

II. JUDICIAL INTERVENTION IS APPROPRIATE AND NECESSARY TO ALLEVIATE INEQUITIES IN THE STATE'S SCHOOL FUNDING SCHEME THAT ARE IMPERVIOUS TO CHANGE

Efforts to reform the inequities in the State's public school finance scheme have been ongoing since the turn of the last century. "For the first time, in 1902, measures of school district wealth were used in the apportionment of state aid. School districts were aided in inverse relationship to their

total assessed valuations." Edwin Margolis and Stanley Moses, The Elusive Quest: The Struggle for Equality of Educational Opportunity 28 (1992). In the intervening years, a succession of blue ribbon commissions and task forces has concluded that New York State's school funding formula is inequitable and in need of substantial reform. See The Elusive Quest at 30, 35-38 (discussing the 1921 educational Finance Inquiry Commission, the 1972 Fleischmann Commission, the 1982 Rubin Task Force, and a number of other studies). See also The New York State Temporary State Commission on the Distribution of State Aid to Local School Districts, Funding for Fairness (December 1988) (the Salerno Commission report); The New York State Special Commission on Educational Structure, Policies and Practices, Putting Children First (December 1993) (the Moreland Act Commission report).

Unfortunately, the limited changes that have been made in the State's school funding scheme in response to those commissions have neither significantly reduced the disparities in per pupil expenditures, nor weakened the positive relationship between school expenditures and district wealth. New York City Schools Chancellor Joel Klein recently confirmed that "New York City is a high needs district in that we enroll over 60 percent of the State's children living in poverty, 79 percent of the State's English Language Learners, and

87 percent of the State's newly immigrated students. [However, t]otal expenditures per pupil are already $1,200 lower than the average for the rest of the state and $3,500 per pupil lower than school districts in our surrounding suburban communities." Joint Hearing of the Assembly Ways and Means Committee and the Senate Finance Committee on the Governor's 2003-2004 Executive Budget Request at 6 (Feb. 25, 2003) (statement of Joel L. Klein) (Morgan Aff., Ex. K). See also Greg Winter, *Decent Education, Figured in Dollars*, N.Y. Times, Oct. 2, 2002 at, B8 ("New York has the nation's biggest gap in school financing between poor and wealthy districts according to a study released in August by the Education Trust. At $2,152 per child, the disparity between what the poorest and richest districts receive for New York students is more than twice the national average. . . ."). As a result, despite more than a century of attempts to increase equity, the convoluted set of formulas used to allocate aid for public education in New York State continue to have a racially disparate impact on our children and still fail to serve the State's educational policy goals. The current Chair of the Assembly Education Committee, Assemblyman Steven Sanders, agrees that "the school aid formula despite, I believe, the best intentions of individuals who have framed what we have in front of us through literally decades of changes and refinements and decisions, nonetheless have resulted

in what, I think, every member of this House would have to concede are glaring inequities." New York State Assembly Floor Debate at 213 (Mar. 26, 1997)(statement of Assemblyman Steven Sanders, Chair of the Assembly Education Committee (D-L, Manhattan)) (Morgan Aff., Ex. L).

Many of the State's elected officials have acknowledged that the political system has failed – and will continue to fail – to bring about the necessary changes in New York State's school funding formula. Judicial intervention is required to improve the State's inequitable and inadequate public school finance scheme. In the words of Assemblywoman Barbara Clark:

> Hopefully this lawsuit [Campaign for Fiscal Equity v. New York] is going to do what we have not been able to do here in the State Legislature – have a court answer to the fact that we are not able to legislate a more equal or a more adequate set of funding guidelines for the City of New York.

Barbara M. Clark, Assembly Update with Assemblywoman Barbara Clark (June 22, 1999).

There are several reasons why it is appropriate for this Court to intervene to break this political impasse – an impasse in which New York State has been mired for more than a century. First, only the courts have the ability to protect the relatively politically powerless minority children of New York

State from the operation of the State's inequitable public school funding scheme. See United States v. Carolene Prods. Co., 304 U.S. 144, 152 n.4 (1938) (explaining the importance of courts in protecting the rights of minority groups). Second, state courts are bound to enforce federal civil rights statutes – like Title VI – which aim to shield members of minority groups from arbitrary deprivations on the basis of race. See Testa v. Katt, 330 U.S. 386, 394 (1947) (state courts cannot treat federal claims any differently than they would analogous claims arising under state law).

Finally, the State's public school funding scheme is not worthy of judicial deference because it does not reflect reasoned deliberation on educational policy. See supra at 12-14. In Levittown v. Nyquist, 57 N.Y.2d 27, 39 (1982), this Court acknowledged that it is "the responsibility of the courts to adjudicate contentions that actions taken by the Legislature and the executive fail to conform to the mandates of the Constitutions [and statutes] which constrain the activities of all three branches." Given the gravity of the educational interests at stake, the fact that the racial disparity is so longstanding, and the inability of the Legislature to remedy this inequitable situation, this case demands judicial intervention.

III. THIS COURT SHOULD REQUIRE THE STATE TO ENSURE THAT ALL CHILDREN HAVE THE OPPORTUNITY TO OBTAIN AN ADEQUATE HIGH SCHOOL EDUCATION THAT PREPARES THEM FOR COMPETITIVE EMPLOYMENT AND TO FUNCTION AS CAPABLE AND PRODUCTIVE CIVIC PARTICIPANTS

The Caucus has repeatedly stated its approval of the trial court's remedial order which sought to ensure that all children in New York State have the opportunity to obtain an adequate high school education that prepares them for competitive employment and to function as capable and productive civic participants. Specifically, Judge DeGrasse held that New York City public school students are entitled to the seven essential elements that, with increased parental involvement, are necessary to improve educational outcomes:

1) Sufficient numbers of qualified teachers, principals and other personnel;

2) Appropriate class sizes;

3) Adequate and accessible school buildings with sufficient space to ensure appropriate class size and implementation of a sound curriculum;

4) Sufficient and up to date books, supplies, libraries, educational technology and laboratories;

5) Suitable curricula, including an expanded platform of programs to help at risk students by giving them "more time on task";

6) Adequate resources for students with extraordinary needs; and

7) A safe orderly environment.

See CFE II, 719 N.Y.S.2d at 550.

In addition, the trial court required the State to determine "the actual costs of providing a sound basic education in districts around the State" and to make whatever structural and programmatic changes to its public school finance system that are necessary to ensure that:

1) [E]very school district has the resources necessary to provide the opportunity for a sound basic education;

2) Variations in local costs are taken into account;

3) Sustained and stable funding is available to promote long-term planning by schools and school districts;

4) The State's method of distributing school aid is sufficiently transparent for the public to understand; and

5) A system of accountability is created to measure whether the reforms implemented by the legislature actually provide the opportunity for a sound basic education and remedy the disparate impact of the current finance system.

See CFE II, 719 N.Y.S.2d at 550-51. Finally, in light of the "significant social science research that indicates that this [racial] isolation has a negative effect on student achievement," the court directed the State to examine the effects of that phenomenon on the City's public school children. Id. at 551.

The Caucus has emphasized that by continuing to ignore its legal obligations, the State "further delays ensuring equal educational opportunities to the students of New York and continues to hinder the State's most vulnerable children from

achieving." See Assembly Resolution K1128 (adopted, June 13, 2001) (Morgan Aff., Ex. M). See also Letter from Assemblyman Roger L. Green to Governor George E. Pataki (dated April 24, 2001) ("The appeal of Justice DeGrasse's decision . . . will continue to deny students in New York City and other high needs school districts the opportunity for a 'sound basic education'") (Morgan Aff., Ex. N); Letter from the Black, Puerto Rican and Hispanic Legislative Caucus to Governor George E. Pataki (dated June 5, 2001) ("delaying a just reform of the school aid formula will condemn and damn a disproportionate number of African American and Latino children to a second class education") (Morgan Aff., Ex. O).

Members of the Caucus and other amici have voiced support for each of the reforms listed in the trial court's remedial order, however, two elements of that remedy are of particular concern to their constituents: the requirements that the State provide an expanded platform of programs for students at risk of educational failure, and that it investigate the adverse consequences of racial isolation in the public schools.

A. The State Must Provide an Expanded Platform of Programs for At-Risk Students

Members of the Caucus and other amici have long lamented the fact that the public school students with the greatest needs in New York State do not have access to adequate educational

resources. As Justice Saxe said in his dissent from the Appellate Division decision:

> there was more than ample support for the central finding that the City's "at-risk" students, amounting to a large segment of its student population, are unable to obtain the education to which they are entitled. Further, evidence supports the trial court's conclusion that it is deficiencies in the programs, personnel, tools and instrumentalities of learning provided by the City schools that prevent these at-risk students from obtaining an education, and that these deficiencies are due to a lack of funds needed to provide the needed programs, personnel and training.

CFE III, 295 A.D.2d at 28. That lack of educational opportunity feeds into a cycle of poverty, unemployment and incarceration: "in New York 76 percent of the people in jail don't have a high school diploma. . . . All we need to do is look at what's going on in our schools to be able to determine how many people we're going to have to put in jail." New York State Assembly Floor Debate at 4 (Aug. 2, 2001) (statement of Assemblywoman Barbara M. Clark, (Dem, Queens)) (Morgan Aff., Ex. P). In an effort to respond to this state of affairs, in 1984, 1985 and 1986, the Caucus introduced a package of bills to apportion more resources

to the education of students at risk of educational failure because of limited English proficiency, poverty or geographic location (Morgan Aff., Ex. Q). The legislation declared that

> the lack of a comprehensive program for pupils-at-risk in the state of New York has resulted in serious deleterious effects both to the pupil and to society. When such pupils are recognized early and given appropriate support services and educational programs, they have greater success in school and at home.

Although the bills were never enacted into law, the Caucus' approach to education for at-risk students comports with the wisdom of educational experts who advocate the implementation of high student performance standards accompanied by "policies ensuring access to [the] resources, including appropriate instructional materials and well prepared teachers," that are necessary to give students a realistic opportunity to learn the curriculum called for by the performance standards. See Linda Darling-Hammond, The Right to Learn: A Blueprint for Creating Schools that Work 279 (1997). Accordingly, this Court should require the State to provide an expanded platform of programs for at-risk students.

B. The State Must Investigate the Adverse Consequences of Racial Isolation in its Public Schools

The Caucus recently called upon the Governor to review and respond to a report by Harvard researchers that lists New York State as the most segregated state in the nation for both African American and Latino students. See Gary Orfield and Nora Gordon, *Schools More Separate: Consequences of A Decade of Resegregation* 44, 49 (July 2001) (Morgan Aff., Ex. R). The report cautioned that "[s]egregated schools are still highly unequal" and encouraged reforms to reverse the national trend towards resegregation. Id. at 51; see also Erica Frankenberg, Chungmei Lee, and Gary Orfield, *A Multiracial Society with Segregated Schools: Are We Losing the Dream?* (January 2003) (Morgan Aff., Ex. S). The high degree of racial isolation in New York State is particularly concerning because "[t]here is a significant link between the lack of racial integration in public schools and disparities in educational opportunity by race. While racially segregated schools are not inherently unequal, schools that serve predominantly minority student bodies tend to have fewer resources and greater concentrations of poor students." Morgan, *The New School Finance Litigation* (Morgan Aff., Ex. F at 123-24). See also Denise C. Morgan, *The Less Polite Questions: Race, Place, Poverty and Public Education*, 1998 Ann. Surv. Am. L. 267 (1998). Indeed, studies

have found that reducing concentrations of poverty in public schools can significantly improve educational outcomes for students of color. See Leonard S. Rubinowitz and James E. Rosenbaum, Crossing the Class and Color Lines: From Public Housing to White Suburbia (2000); Jens Ludwig, Helen F. Ladd, and Greg J. Duncan, *The Effects of Urban Poverty on Educational Outcomes: Evidence from a Randomized Experiment* in Brookings-Wharton Papers on Urban Affairs 2001 (William G. Gale and Janet Rothenberg Pack, eds. 2001). Amici, therefore, urge this Court to require the State to examine the effects of racial isolation on New York City's public school students.

CONCLUSION

For the forgoing reasons, this court should reverse the Appellate Division's decision and issue an order upholding the Campaign for Fiscal Equity plaintiffs' challenge to New York State's public school finance system.

Respectfully submitted,

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