

COURT OF APPEALS
of the
STATE OF NEW YORK

CAMPAIGN FOR FISCAL EQUITY, INC., AMINISHA BLACK, KUZALIAWA BLACK, INNOCENCIA BERGES-TAVERAS, BIENVENNIDO TAVERAS, TANIA TAVERAS, JOANNE DEJESUS, ERYCKA DEJESUS, ROBERT JACKSON, SUMAYA JACKSON, ASMANHAN JACKSON, HEATHER LEWIS, ALINA LEWIS, SHAYNA LEWIS, JOSHUA LEWIS, LILLIAN PAIGE, SHERRON PAIGE, COURTNEY PAIGE, VERNICE STEVENS, RICHARD WASHINGTON, MARIA VEGA, JIMMY VEGA, DOROTHY YOUNG, and BLAKE YOUNG,

Plaintiffs-Appellants,

-against-

THE STATE OF NEW YORK, GEORGE E. PATAKI, as Governor of the State of New York, and MICHAEL H. URBACH, as Tax Commissioner of the State of New York,

Defendants-Respondents.

BRIEF OF PROPOSED *AMICUS CURIAE*
LEAGUE OF WOMEN VOTERS OF NEW YORK STATE, INC.

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PRELIMINARY STATEMENT

Effective democracy depends on capable and committed citizens. Since its founding more than two hundred years ago, American democracy has been sustained by the willingness of citizens to engage in political action and by their capacities to make government responsive to their needs and aspirations. Public schools play an essential role in preparing students for these responsibilities. New York's future voters and jurors, school board members, mayors, legislators, and governors sit in classrooms across the state right now. But the education that many students in New York City receive fails to provide even minimally adequate preparation for the demands that our democratic society will place upon them.

The record in this case provides overwhelming support for the trial court's finding that the education provided to New York City students fails to prepare them to be competent voters or jurors (or to function productively in the workplace) and thus that it "is so deficient that it falls below the constitutional floor." *Campaign for Fiscal Equity v. State*, 187 Misc.2d 1, 4 (N.Y. Sup. Ct. 2001), *rev'd* 744 N.Y.S.2d 130 (2002). Although the Appellate Division agreed with the trial court that students must be given the skills that would permit them to understand the kind of complex issues that they might be asked to evaluate as voters or jurors, such as tax policy, global warming, or DNA evidence, the Appellate Division inexplicably, and with no credible evidentiary basis, held that the skills "imparted between grades 8 and 9," *Campaign for Fiscal Equity v. State*, 744 N.Y.S.2d 130, 138 (N.Y. App. Div. 2002), are sufficient to prepare students to discharge competently these vital civic responsibilities.

The Appellate Division's eighth grade standard is clearly belied by the record in the case, the consensus opinion of educators and social scientists, and common sense. This Court should reverse the Appellate Division decision and reinstate the trial court's remedial order so that our students receive the sound basic education the Constitution -- and our democracy -- require.

INTEREST OF AMICUS CURIAE

Proposed *amicus curiae* League of Women Voters of New York State, Inc. ("the League") is a nonpartisan not-for-profit organization that promotes the informed and active participation of citizens in government, works to increase public understanding of major public policy issues, and strives to influence public policy through education and advocacy. It is an affiliate of the League of Women Voters of the United States ("the national League"), which has been a trusted force for change and good government since its founding in 1920.

In 1996, in response to growing concern that the foundations of American democracy are weakening, the national League, together with affiliates throughout the country, launched the *Making Democracy Work* campaign to examine and address critical problems facing our political system. A recent report released by the national League as part of this project identifies five key indicators of the health of a democracy: voter turnout, campaign finance, civic education and knowledge, diversity of representation, and civic participation. While the report provides sobering statistics about the current state of affairs, it also offers concrete suggestions for remediation and demonstrates that civic education is a crucially important, effective, and necessary component to the

building of a healthy democracy. *See* League of Women Voters, *Making Democracy Work*, available at www.lwv.org/elibrary/pub/chad/chad_4b.html.

The national League and its affiliates have longstanding expertise in the process of democracy and an understanding of the skills and knowledge that make capable voters, jurors, and civic leaders. The League submits this *amicus* brief to provide this Court with a historical perspective on the connection between public schools and civic participation; decisions from courts in other jurisdictions on the role that public schools play in building a capable electorate; and contemporary research from political scientists, educators, and advocates on the skills that students need to become competent and committed civic participants.

As an advocate for a robust democracy throughout New York State, the League is committed to promoting widespread dialogue on significant public issues. The League has been working closely with the Campaign for Fiscal Equity, Inc., on a series of public engagement activities designed to ensure that the community fully understands the critical policy issues in this case and that Plaintiffs' positions are informed by an accurate understanding of public needs and the state of public schools.

ARGUMENT

This Court has stated that a “sound basic education” consists of the skills necessary to enable students to “function productively as civic participants capable of voting and serving on a jury.” *Campaign for Fiscal Equity v. State* [“CFE I”], 86 N.Y.2d 307, 316 (1995). The founding fathers, the leaders of the common school movement, and the legislators who enacted Article XI, Section 1 of the New York State Constitution (“the Education Clause”) shared a conviction that education was the key to a successful democracy. Other courts considering constitutional challenges to the adequacy or equity of their state’s education system have consistently emphasized that education must be adequate to prepare citizens to discharge competently their civic responsibilities.

There is a broad consensus among educators and social scientists that effective civic participation requires (1) analytic skills that enable voters and jurors to assess the significance and credibility of statements, synthesize information, and communicate effectively; (2) substantive knowledge regarding the operation of government, history, geography, and economics; and (3) appreciation of the shared civic values that underlie our political structure. Educators can and should train students accordingly for their civic responsibilities. Indeed, in developing New York’s new “Learning Standards,” the Board of Regents established educational objectives, curriculum frameworks designed to be presented during the twelve or thirteen years of a student’s education, and assessments that specifically address each of these critical areas of civic education.

The recognition that schools play an essential role in educating future generations of civic participants should be more than merely lip service to the ideals of democracy. Extensive testimony at trial supported the trial court’s finding that students need high-

level cognitive skills and substantive civic knowledge to be effective civic participants. The Appellate Division had no evidentiary basis for concluding that middle-school level literacy and math skills would be adequate preparation. The comprehensive trial record in this case offers this Court a unique opportunity to articulate explicitly the skills that students need to be capable voters and jurors and thus to ensure that schools fulfill their vital role in preparing students for their future civic responsibilities.

Consistent with its commitment to civic participation, the League, working with the Campaign for Fiscal Equity, has invited New Yorkers across the state to engage in wide-ranging discussions on the definition of a sound basic education, proposals for reform of the state education finance system, possible structures for promoting accountability at the local and state level, and the precise skills that students need for civic engagement. Continuation of this kind of productive dialogue could promote and facilitate effective implementation of necessary institutional reforms at the remedy stage of this lawsuit.

I. PUBLIC SCHOOLS PLAY AN ESSENTIAL ROLE IN PREPARING STUDENTS FOR THEIR CIVIC RESPONSIBILITIES

A. The State’s Constitutional Heritage Emphasizes the Importance of Preparing Students for Civic Participation

This Court’s recognition that public education plays an essential role in preparing citizens for civic participation is firmly anchored in our constitutional heritage. In creating a (then radically experimental) self-governing democracy, the founding fathers recognized that citizens would need to be able to exercise critical analytic skills in reading, writing and oral rhetoric. As the United States Supreme Court has noted, Thomas Jefferson correctly observed early on that “education is necessary to prepare

citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence.” *Wisconsin v. Yoder*, 406 U.S. 205, 221 (1972).

Benjamin Franklin urged “that students be required to read newspapers and journals of opinions on a regular basis, and that they be incited to debate and argue over the ... major controversies of the day.” Lorraine Smith Pangle & Thomas L. Pangle, *What the American Founders Have to Teach Us About Schooling for Democratic Citizenship*, in *Rediscovering the Democratic Purposes of Education* 21, 30 (Lorraine M. McDonnell et al., eds. 2000). As contemporary political scientist Lorraine McDonnell explains, “[t]he original rationale for public schooling in the United States was the preparation of democratic citizens who could preserve individual freedom and engage in responsible self government.” Lorraine M. McDonnell, *Defining Democratic Purposes*, in *Rediscovering the Democratic Purposes of Education*, *supra*, at 1.

The common school movement of the nineteenth century was a major advance towards achieving the democratic promise of education. As its name implies, the common school movement promoted a system of free public schools in which all children -- whatever their class or ethnic background -- would be educated together; the common schools were intended to replace the hodgepodge of town schools, church schools, private schools, and pauper schools that then existed. Horace Mann, the founder of the movement, expressed the underlying democratic ideals:

“[U]nder our republican government, it seems clear that the minimum of this education can never be less than such as sufficient to qualify each citizen for the civil and social duties he will be called to discharge, such an education as ... is indispensable for the civil functions of a witness or a juror; as is necessary for the voter in municipal and in national affairs; and finally, as is requisite for the faithful and conscientious discharge of all those duties which devolve upon the inheritor of a portion of the sovereignty of this great republic.”

Horace Mann, *The Massachusetts System of Common Schools: Tenth Annual Report of the Massachusetts Board of Education* 17 (1849), quoted in *McDuffy v. Secretary*, 615 N.E.2d 516, 555 (Mass. 1993). Common school proponents recognized that legal reform would be necessary to ensure that the changes they implemented would be enduring. Accordingly, they successfully fought (in what were often fierce political battles) for language guaranteeing the establishment of common schools to be added to constitutions of states across the country, including that of New York.

The New York State Constitution's requirement that the Legislature "provide for the maintenance and support of a system of free common schools," N.Y. Const. Art. XI, § 1, clearly grew out of the common school movement. It was enacted with an understanding that schools played a central role in preparing students for not only for the challenges faced by the public of that era but also for those to be faced by future generations. As the Committee that drafted the language explained:

Whatever may have been their [i.e., the common schools'] value heretofore ... their importance for the future cannot be overestimated. The public problems confronting the rising generation will demand accurate knowledge and the highest development of reasoning power more than ever before; ... too much attention cannot be called to the fact that the highest leadership is impossible without intelligent following, and that the foundation of our educational system must be permanent, broad and firm, if the superstructure is to be of real value.

"Report of the Committee on Education and the Funds Pertaining Thereto," *available at* 5 *Revised Record at Constitutional Convention of 1894*, at 695 (Doc. No. 62).

Ironically, of course, at the time that Jefferson and Mann recognized democracy's critical need for an educated electorate, and, to a lesser extent, at the time that New York added the education clause to its constitution, both the franchise and

access to education were greatly restricted. Throughout much of American history, those who did not own property, blacks and other minorities, and women could not vote, serve on juries or engage in other civic activities. Thus, the historic unavailability of an adequate education to many Americans had a limited effect on the functioning of the political system; most of those who were uneducated also were not permitted to participate as full citizens. Now, as our country embraces and implements a commitment to ensuring that every citizen can become an active civic participant, adequate education for all takes on even greater significance.

B. Other Courts Have Also Consistently Held that Education Must Prepare Students for Citizenship

As the Supreme Court famously held fifty years ago, “[e]ducation is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society.... *It is the very foundation of good citizenship.*” *Brown v. Board of Educ.*, 347 U.S. 483, 493 (1954) (emphasis added). State courts that have interpreted education clauses in their constitutions have, like this Court, consistently held that, at a minimum, education must be sufficient to prepare students for civic participation, as well as for the competitive workplace. For example, the Supreme Judicial Court of Massachusetts recently considered a similar claim regarding the adequacy of that state’s schools. The court reviewed the history of the common school movement and its commitment to education for democratic participation. In holding that the state’s education system was inadequate, the court quoted principles expressed by Horace Mann as support for its determination that constitution required an education that “prepare[s] [children] to participate as free citizens of a free State,” *McDuffy v. Secretary*,

615 N.E.2d 516, 548 (Mass. 1993), with “sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation.” *McDuffy*, 615 N.E.2d at 554 (quoting *Rose v. Council for Better Educ.*, 790 S.W.2d 186, 212 (Ky. 1989)). See also, e.g., *Serrano v. Priest*, 487 P.2d 1241, 1258 (Cal. 1971) (education is “crucial to participation in, and the functioning of, a democracy”); *Robinson v. Cahill*, 303 A.2d 273, 295 (N.J. 1973) (thorough and efficient education required by constitution is “that educational opportunity which is needed in the contemporary setting to equip a child for his role as a citizen,” as well as competitive employment); *Seattle Sch. Dist. No. 1 v. Washington*, 585 P.2d 71, 94 (Wash. 1978) (constitution requires education to provide “opportunities needed in the contemporary setting to ... prepare our children to participate intelligently and effectively in our open political system to ensure that system's survival”); *Claremont Sch. Dist. v. New Hampshire*, 635 A.2d 1375, 1381 (N.H. 1993) (constitution requires education to prepare “citizens for their role as participants and as potential competitors in today’s marketplace of ideas”); *Campbell Sch. Dist. v. Wyoming*, 907 P.2d 1238, 1259 (Wyo. 1995) (constitution requires students to be offered “a uniform opportunity to become equipped for their future roles as citizens, participants in the political system, and competitors both economically and intellectually”); *Abbeville County Sch. Dist. v. South Carolina*, 515 S.E.2d 535, 540 (S.C. 1999) (defining adequate education as, among other things, “fundamental knowledge ... of history and governmental processes”).

Despite the broad consensus that schools have a responsibility -- codified in state constitution education clauses -- to prepare students for civic participation, none of these other highest state courts had a trial record that permitted a detailed assessment of the

level of skills actually required. The comprehensive record in this case offers this Court a unique opportunity to articulate explicitly the skills students need to be competent voters and jurors and thus to advance the national movement to ensure that schools properly carry out their vital role in preparing students for civic engagement.

II. SCHOOLS NEED TO PROVIDE STUDENTS WITH ANALYTIC SKILLS, BASIC CIVIC KNOWLEDGE, AND CORE CIVIC VALUES SO THAT THEY BECOME CAPABLE OF EXERCISING CIVIC RESPONSIBILITIES

A. There Is a Broad Consensus on the Urgent Need for, and Necessary Components of, Education for Effective Civic Participation

It is easy to recite sobering statistics on the unhealthy state of American democracy. Barely half of all eligible voters actually voted in the last presidential election, and voter participation is even lower for primaries, mid-term elections, and local and statewide races. *See, e.g.*, Federal Election Commission, “Voter Registration and Turnout Statistics,” available at <http://www.fec.gov/elections.html>; Center for Voting and Democracy, “Voter Turnout,” available at <http://www.fairvote.org/turnout/>. As Robert Putnam has observed, increasing numbers of Americans “bowl alone”; active involvement in civic associations ranging from community organizations to bowling leagues “has collapsed at an astonishing rate, more than halving most indexes of participation within barely a few decade.” Robert D. Putnam, *Bowling Alone: The Collapse and Revival of American Community* 63 (2000). A nationwide standardized test administered in 1998 by the National Assessment of Educational Progress (NAEP) found that shockingly high numbers of students lack fundamental civics knowledge. For example, only 6% of eighth graders could describe how a country benefits from having a constitution and only 30% of high school seniors knew that the U.S Supreme Court uses

judicial review to protect minority rights. *See* David J. Hoff, *Beyond Basics, Civics Eludes U.S. Students*, *Educ. Week* (Nov. 24, 1999).

Concern that such civic disengagement threatens American democracy, combined with the systematic review of the goals of public education engendered by the standards-based reform movement, has caused educators and social scientists to focus on the skills, knowledge, and values students need to become effective civic participants. For example, in the early 1990s, the U.S. Department of Education and the Pew Charitable Trusts jointly funded the Center for Civic Education, an independent nonprofit organization, to bring together political scientists, social studies teachers, curriculum specialists, and policy advocates to develop standards setting forth what students need to know and be able to do in the field of civics and government. The result was the voluntary “National Standards for Civics and Government,” published in 1994, *available at* <http://www.civiced.org/stds.html> [hereinafter “Volunteer Standards”]. The National Assessment Governing Board (NAGB), a federally-created independent organization charged with setting policy for the National Assessment of Educational Progress (NAEP), used the standards as the basis for development of the 1998 NAEP civics assessment. *See* NAGB, *Civics Framework for the 1998 National Assessment of Educational Progress*, *available at* <http://www.nagb.org/pubs/civics.pdf>.

Most states, including New York, have incorporated civics skills, knowledge, and values (often based on the voluntary standards) into their state-specific education standards. *See* Kenneth W. Tolo, *The Civic Education of American Youth: From State Policies to School District Practices 23-25* (1999) (summarizing civics in state standards). The National Council for Social Studies (NCSS) and the Association for Supervision and

Curriculum Development (ASCD), both leading education organizations, also urge their members to ensure that schools prepare students for civic participation. See NCSS, *Creating Effective Citizens* (policy statement adopted by NCSS board in May 2001), available at <http://databank.ncss.org/article.php?story=20020402121158431> (“primary goal of public education is to prepare students to be engaged and effective citizens”); Erik W. Robelen, *Infobrief: Re-engaging Young People: Educating for Democratic Life* (June 1998), available at <http://www.ascd.org/frameinfobrief.html> (policy paper for ASCD members emphasizing that schools can and should give students the “skills, understanding, and character traits to live out the promise of this nation’s democratic ideals”).

1. Students Need Analytic and Communication Skills to Be Effective Civic Participants

As voters and jurors, citizens must assess information outside that which they typically encounter in daily life and then use this information to make reasoned decisions. Understanding the specific words on a ballot or in jury instructions or being able to read newspaper coverage of an election is merely a prerequisite for civic participation. Likewise, knowledge of relevant context, history, and government structures is necessary but not sufficient. Educators and social scientists consistently emphasize that students need to have the analytic skills to understand and make reasoned choices regarding the raw information they obtain. For example, a task force assembled by the Education Commission of the States, the primary resource on education policy for state legislators and policy makers, identified the following analytic skills as necessary elements of a civics education:

- Communication and persuasion skills
- Problem solving and conflict resolution
- Ability to organize fellow citizens around concerns

- Critical inquiry, judgment, and reflection
- Ability to acquire information from primary and secondary sources and evaluate it for objectivity, accuracy, and point of view
- Ability to balance self interest with public interest

Education Commission of the States (ECS), *Every Student a Citizen: Creating the Democratic Self* 14 (2000). The National Council for the Social Studies similarly identifies an effective citizen as one who has the skills to:

- Seek[] information from varied sources and perspectives to develop informed opinions and creative solutions
- Ask[] meaningful questions and is able to analyze and evaluate information and ideas
- Use[] effective decision-making and problem-solving skills in public and private life
- Has the ability to collaborate effectively as a member of a group

NCSS, *Creating Effective Citizens*, *supra*, at 2.

The experts consistently recognize that civic participation requires an ability to assess the reliability of information received from various sources and then synthesize it to reach conclusions. Political scientists Arthur Lupia and Mathew McCubbins recently undertook a detailed analysis of how citizens make decisions about complex issues based on limited information. *See* Arthur Lupia & Mathew D. McCubbins, *The Democratic Agenda: Can Citizens Learn What They Need to Know?* (1998). They observed that “after attending to families, jobs, social commitments, and various other demands,” most citizens have little time to inform themselves about current political issues at the local, state, or national level. *Id.* at 17. Although cues such as party membership are presented as substitutes for complex information, most political decisions, and certainly most court cases, require us to choose among or between competing information sources. *See id.* at 60-67. The ability to make reasoned decisions based on limited information thus is premised on the ability to assess the reliability of a given information source and,

relatedly, to recognize the bias or spin that a given speaker may bring to the presentation of an issue. *See id.* at 68-78; *see also, e.g.*, NAGB, *Civics Framework, supra*, at 27-28 (emphasizing that to evaluate a position, students must be able, among other things, to evaluate the source or omission of data and the reliability and relevance of evidence relied upon; to discount illogical arguments such as personal attacks, insinuation, and innuendo; and to predict accurately the probable consequences of a given position); Margaret Stimmann Branson, *The Role of Civic Education* 6 (Sept. 1998), available at http://www.civiced.org/articles_role.html (emphasizing that in addition to generally applicable synthesis skills, citizens must be able to “identify emotional language and symbols” to “discern the true purposes for which emotive language and symbols are being employed”).

Once citizens have the requisite analytic skills, democracy depends on their ability to work together to enact policy. Likewise, our system of peer juries requires that citizens be able to deliberate effectively to make joint decisions. While the central importance of communication skills may seem self-evident, political scientist Amy Gutmann observes that in our contemporary society, “communicating by sound bite, competing by character assassination, and resolving political conflicts through self-seeking bargaining, log-rolling, and pork barreling too often substitute for moral deliberation on the merits.” Amy Gutmann, *Why Should Schools Care about Civic Education?*, in *Rediscovering the Democratic Purposes of Education, supra*, 73, 80. She concludes that giving students experience in discussing difficult issues in a respectful manner is essential to raise the level of democratic debate. *See id.* at 80-82; *see also, e.g.*, Richard G. Niemi & Jane June, *Civic Education: What Makes Students Learn* 150 (1998)

(emphasizing that effective civics education should prepare students for the strong differences and contentious debate that characterize actual democracy).

2. Students Need a Basic Understanding of Government, Political Institutions, History, and Economics to Be Effective Civic Participants

Civic participation also obviously requires basic knowledge of how government operates at all levels. This civics curriculum may be learned in a variety of courses, including history, social studies, geography, economics, and government. The Framework for the NAEP Assessment lays out five key “questions” as essential:

- What are civic life, politics, and government?
- What are the foundations of the American political system?
- How does the government established by the Constitution embody the purposes, values, and principles of American democracy?
- What is the relationship of the United States to other nations and world affairs?
- What are the roles of citizens in American democracy?

NAGB, *Civics Framework, supra*, at 18, and discussed in detail, 19-23. The Education Commission on the States taskforce identified similar key areas as necessary:

- Understand the structure and mechanics of constitutional government, political institutions and how they evolved in the history of the United States;
- Understand such democratic principles as the rule of law; majority rule; natural rights; and freedom of religion, speech and association;
- Know how ordinary citizens have acted in the past to create change;
- Understand the influences of economics, geography and social forces on politics;
- Understand and describe local problems and their connection to state and national issues;
- Be familiar with current issues, policy questions, and potential solutions.

Every Student a Citizen, supra, at 13. See also, e.g., NCSS, *Creating Effective Citizens, supra* (similar list of necessary knowledge areas); Niemi & Junn, *supra*, at 151 (noting that NAEP data reveals students particularly need instruction in the quantitative skills

involved in reading charts and tables). Such content knowledge, however, is almost meaningless if students do not have the requisite intellectual skills to probe what they learn and make reasoned decisions from it. As Margaret Branson, the Associate Director of the Center for Civic Education that developed the Voluntary Standards, explains “[d]emocracy is a dialogue, a discussion, a deliberative process in which citizens engage.” Branson, *supra*, at 4; *see also* Robelen, *supra* (“ “[W]hen politics and community are reduced to test-taking skills, schools produce spectators, not citizens.”) (quoting George Wood, former head of the Institute for Democracy in Education).

Knowledge about both the central importance and the operation of the jury system is particularly crucial. A 30-member task force convened by the Chief Judge of this Court in 1993 to review jury service in New York State concluded that it was essential to introduce the jury process to children long before they would be called upon to serve. The task force’s report urges that “[e]ducation can be the vaccine that counters our common tendency to become cynical about the need for all citizens to participate as jurors.” *The Jury Project: Report to the Chief Judge of the State of New York* (Mar. 31, 1994), at 107. The task force concluded that education is particularly crucial for historically disenfranchised communities who tend to be under-represented on juries, often in large part because they do not respond to jury summons. As the authors of the report put it:

Enhanced public education about jury service is a critical component -- and may be the critical component -- of ensuring an adequate flow of minority jurors in parts of the state where the number of minorities who report for jury service is disproportionate to their number in the community.

Id. (emphasis original).

3. Students Need to Be Introduced to Core Civic Values

Effective education must instill in students a respect for the basic premises on which our democracy is founded. For example, the broadly-based ECS task force concluded that vital “civic attitudes” include that a student:

- Belie[ve] in liberty, equality, civil and humanitarian rights, personal responsibility, courage, diligence, fairness, honesty, trustworthiness, personal integrity
- Recognize and respect human diversity, including the view of others
- Consider the balance between rights and responsibilities
- Foster the value of service and continued involvement in the community
- Believe in shared democratic values and participate in civic and political processes

Every Student a Citizen, supra, at 13-14. NAGB likewise emphasizes that schools need to help students develop “dispositions” for civic participation such as assuming personal, political, and economic responsibilities of a citizen, participating in civic affairs, and respecting individual worth and dignity. *See* NAGB, *Civics Framework, supra*, at 31-33.

Although many teachers in public schools shy away from explicit “values” instruction, there is widespread agreement across the political spectrum that instruction in civic attitudes and civic values is essential. *See* Robelen, *supra*, at 3-4 (advocating character education as essential and noting that prominent proponents include both liberals such as Bill Clinton and conservatives such as William Bennett); Gutmann, *supra*, at 82 (“A recent study [shows] ... that self-identified conservatives, moderates, and liberals all share a core set of convictions about citizenship education that include the following: encouraging toleration and open-mindedness, addressing controversial issues, and developing an understanding of different cultures.”). Since public schools often bring together a cross section of a community, they can be particularly important in instilling values of tolerance and respect for diversity. *See, e.g.*, Center on Education Policy, *Public*

Schools and Citizenship 4 (1998), available at http://www.ctredpol.org/democracypublicschools/pubschool_citizen.htm (schools give students the “opportunity to learn and respect different points of view, to disagree amicably, and to reach livable compromises”). Emphasizing tolerance is not merely an expression of political correctness. Rather, as Amy Gutmann demonstrates, the procedural, constitutional, and deliberative methods of dispute resolution on which democracy depends require that civic participants “are willing and able to engage in a politics of reasoning and persuasion rather than a politics of manipulation and coercion”; education promoting tolerance plays a key role in preparing citizens able to take on such active participation. Gutmann, *supra*, at 76-81.

Providing students with opportunities to become directly involved in local politics or community activities, as well as in thoughtfully-constructed simulations, can play an important role in developing their skills, knowledge, and commitment to civic participation. The ECS taskforce promotes “service learning” as a “significant pedagogy for helping students develop into good citizens because it provides both a context and method for practicing the requisite civic skills.” “Every Student a Citizen,” 18 (discussing concept and providing examples). The League has likewise found that activity-based learning, such as organizing students to work together on a local policy issue of their choice, is particularly effective. *See Making Democracy Work*, at “Civic Education – What Works” (describing several activities organized by local Leagues). Such activities have lasting effects because they can instill a respect for and commitment to democracy that encourages continuing involvement after graduation. *See*, Center for Civic Education, “Voting and Political Participation of ‘We the People ... The Citizen and the Constitution’

Alumni” (2001), available at www.civiced.org/eval_alumni_execsumm.html (showing that alumni of the program were considerably better informed about political issues and participated at higher rates than their 18-30 year old peers).

B. Contemporary Literacy Studies Demonstrate a Strong Correlation Between the Level of Education Attained and the Functional Literacy Skills Necessary for Effective Civic Participation

As discussed above, education researchers and social scientists, as well as this Court and other courts, have consistently recognized that education is necessary to prepare the country’s citizens to participate effectively in our democracy, as well as to compete in the global economy. Recent literacy studies confirm a strong correlation between the level of education attained and the ability to function effectively in society. Indeed, realizing the critical importance of understanding the nature and extent of literacy among the nation’s adults, Congress has funded four large-scale national literacy studies: a 1985 study of young adults aged 21-25, a 1989-90 study of job seekers, a 1992 study of adults generally, and a 2002 study of adults generally (the results from the 2002 study are not yet public).¹ The researchers conducting each study recognized that the problem in contemporary America generally is not illiteracy -- that is, a complete inability to read -- but rather an inability to understand and use information in printed materials. The studies therefore rejected earlier standards used in literacy studies, such as the ability to sign one’s name or scoring at a particular grade level on a reading assessment, and instead

¹ A list of publications analyzing data from these studies is available at <http://nces.ed.gov/naal/resources/resources.asp>. Published research includes: Irwin S. Kirsch & Ann Jungblut, *Literacy: Profiles of America’s Young Adults* (NAEP Rep. 16-PL-02, 1986) [hereinafter Kirsch, *Young Adult Literacy*] (review of results from 1985 study of young adult literacy); Richard L. Venezky et al., *The Subtle Danger: Reflections on the Literacy Abilities of America’s Young Adults*, NAEP Rep. 16-CAEP-01 (1987) (further analysis of 1985 study); Irwin S. Kirsch et al., *Adult Literacy in America: A First Look at the Findings of the National Adult Literacy Survey*, NCES Rep. 1993-275 (3d ed. 2002), available at nces.ed.gov/pubs93/93275.pdf (review of results from 1992 study of adult literacy); Carl F. Kaestle et al., *Adult Literacy and Education in America*, NCES Rep. 2001-534 (2001), available at nces.ed.gov/pubs2001/2001534.pdf (analysis of 1992 study focusing on effects of education).

defined literacy as the ability to “us[e] printed and written information to function in society, to achieve one’s goals, and to develop one’s knowledge and potential.” Kirsch, *Young Adult Literacy*, 3; Kirsch, *Adult Literacy*, 2-3. The tests simulated “real world” tasks to assess three related but distinct skill sets identified by the experts: *prose literacy*, defined as the ability to locate and process information in texts ranging from newspaper editorials to product warranties; *document literacy*, defined as the ability to understand and use information in printed materials such as maps, schedules, and tables; and *quantitative literacy*, defined as the ability to effectively perform basic arithmetic calculations based on texts, such as figuring out a tip or balancing a check book. *See* Kirsch, *Young Adult Literacy*, 3; Kirsch, *Adult Literacy*, 2-3.

The studies dramatically illustrate that the skill level typically displayed by an adult with less than a high-school level education is far from sufficient for effective civic participation. For example, less than a quarter of young adults with no high school education and just 41.4% of young adults who had some high school education but had failed to get a diploma demonstrated the skills required to write a basic letter explaining an error in a billing charge. More directly relevant to consideration of civic participation, 0% of those with no high school education and only 9.7% of those with some high school education but no diploma demonstrated the skills required to synthesize the main argument from a lengthy news article. *See* Kirsch, *Young Adult Literacy*, at 13-14; *see also* Kirsch, *Adult Literacy*, 25-27; Kaestle, at 15-18. Likewise, only 11% of those with no high school education and 22% of those with some high school education demonstrated an ability to interpret a straightforward graph depicting differing sources of

energy consumed in the United States over time. See Kirsch, *Young Adult Literacy*, at 25; Kirsch, *Adult Literacy*, 25-27; Kaestle, at 15-18.

The researchers conducting these studies recognized that their findings, which demonstrate that there is a “significantly large segment of the population who cannot easily comprehend passages with difficulty levels comparable to typical laws, political statements, and instructions for voting,” should be “cause for alarm.” Venesky, *The Subtle Danger*, 51-52. Indeed, as explained in a passage that presages the definition of skills needed for civic participation reached by Justice DeGrasse in this case:

In our day, we tend to overlook the educational demands of citizenship.... [Yet] issues, like nuclear disarmament, the federal deficit or acid rain ... [require] citizens who have critical reading skills, including what Kenneth Prewitt calls “scientific savvy” --- not a theoretical understanding of all the areas of science involved in public policy but some skill at evaluating arguments based on statistics, some training in weighing conflicting evidence, and some understanding of the social and political context of scientific work.... *Literacy, beyond the basic ability to read and write, is fundamental to this democracy.*

Id. at 51-52 (emphasis added). Education must play a key role in addressing these shortcomings. See *id.* Indeed, although the functional literacy skills assessed in these studies were somewhat different from the reading comprehension skills typically taught and assessed in schools, see, e.g., Kaestle, *Adult Literacy and Education*, 15-16, the evidence in the studies consistently demonstrated a strong correlation between the level of formal education and functional skill level:

Formal education correlates strongly with higher literacy abilities at all levels and among all groups. We cannot prove from such correlations that education *causes* higher literacy abilities, but anyone who thinks that formal education only functions to hand out credentials, or that schools are failing to make a difference in people’s actual functional skills must reckon with these data. They show substantial literacy gains at every increasing level of formal schooling among all groups, including males and females, racial/ethnic groups, and age groups.

Id. at xxix-xxx (emphasis original); *see also, id.* at 16 (“Although the correlation does not prove a causal relationship, it is hard to imagine a successful strategy for improving future adult literacy abilities that does would ignore the importance of more and better schooling for individuals.”); Venezky, 34-36; Kirsch, *Adult Literacy*, 25-27 (both also finding strong correlation between level of education attained and literacy proficiency). The literacy studies provide clear evidence that a disturbingly large portion of adults lack the basic skills they need to function effectively as civic participants – and that education is an essential element of ensuring that future generations have the skills they need.

III. THE EVIDENCE ESTABLISHED THAT NEW YORK CITY’S PUBLIC SCHOOLS DO NOT IMPART THE BASIC SKILLS STUDENTS NEED TO BE COMPETENT CIVIC PARTICIPANTS

A. The Regents Learning Standards Incorporate the Skills, Knowledge, and Values that Are Essential for Civic Participation

The unrebutted evidence in the record, including the testimony of the current and former Commissioners of Education, the Chancellor of the Board of Regents, and other witnesses who participated personally in the developments of New York’s Regents Learning Standards, establishes that the standards were developed and adopted with the specific intent of identifying skills students need to be capable civic participants, as well as to obtain and sustain competitive employment in today’s society. As Commissioner Mills explained, the Learning Standards were adopted:

[t]o make certain all students in New York are prepared to be citizens, to, in other words, be able to vote and know what they are voting on and carry the other burdens of the citizenship, serve on juries and do all the things that citizens must do [as well as to prepare them for work and to be competent as individuals and parents].

Mills 1131:20-1132:6.2 Chancellor Hayden characterized the objectives similarly, stating that the intent of the standards is “to give our young people the skills they need in order to be effective citizens, effective mothers and fathers, effective participants in our great democratic enterprise.” Hayden 1300:19-24. And Dr. Linda Darling-Hammond, the Chair of the Council on Curriculum and Assessment charged with developing the standards explained, “The Council on Curriculum and Assessment, as part of its work and the work of the subcommittee [on social studies], spent a fair amount of its attention on the question on what skills do students need for citizenship, including voting, serving as a member of a jury, and other citizenship activities.” Darling-Hammond 6472:12-18.³

Likewise, the undisputed evidence at trial, including statements by many of those most intimately involved with the development of the standards, established that educators believe the standards are the *bare minimum skills* required for successful civic participation. As Commissioner Mills explained:

[Y]oungsters who grow up to be adults who don’t have these skills [demonstrated by mastery of the standards] can’t take part in a free society. *They would not be able to bear the burdens of citizenship.* They would not be able to have a choice of work.... [I]t is absolutely of critical importance that all students have this knowledge and these skills.

2. Citations to the trial transcript are identified by the name of the testifying witness followed by the specific page and line number of the transcript. Citations to exhibits in the record are identified by the prefix “Px” for Plaintiffs’ exhibit, and “Dx” for Defendants’ exhibit, followed by the exhibit number and, where appropriate, a page number of the exhibit.

3. Various reports issued by the Regents and those charged with developing the standards corroborate that preparation for citizenship was a central objective. *See, e.g.*, Px 519, “A New Compact for Learning: Improving Public Elementary, Middle, and Secondary Results in the 1990s,” 20 (a report issued by the Regents in November 1991 identifying education goals including that “each student will acquire and be able to apply knowledge about political, economic, and social institutions and procedures” and that “each student will respect and practice the basic civic values and acquire and use the skills, knowledge, understanding, and attitudes necessary to participate in democratic self government”); Px 1948, “Learning-Centered, Curriculum and Assessment for New York State: Report of the New York State Curriculum and Assessment Council to the Commissioner of Education and the Board of Regents,” 64 (identifying “developing interpersonal and citizenship competencies” as an “essential skill and disposition” that guided the committee in development of proposed standards).

Mills 1132:7-20 (emphasis added); *see also* Chancellor Hayden 1301:24-25 (“These standards represent our judgment about what our young people *need*.”) (emphasis added); Curriculum Committee Chair Darling-Hammond 6479:23-6480:13. (“[I]t was the judgment of the committee that developed these [standards] that *all of these skills are really required ... [by] the modern tasks of citizenship in today’s society*.”) (emphasis added).

Not surprisingly, the educators charged with developing the Regents Learning Standards identified the range of skills, knowledge, and values discussed in Section II as being necessary for civic participation. For example, the fifth social studies standard, “Civics, Citizenship, and Government,” provides:

Students will use a variety of intellectual skills to demonstrate their understanding of the necessity for establishing governments; the governmental system of the United States and other nations; the United States Constitution; the basic civic values of American constitutional democracy; and the role, rights, and responsibilities of citizenship, including avenues of participation.

Px 322, at 1; *see also id.* at 28-29 (discussing in more detail these necessary skills, knowledge, and values). The other social studies standards (history of the United States and New York, world history, geography, and economics) and several of the English standards also address skills and knowledge that are essential for civic competency. *See generally* Px 322 and Px 318. The standards translate the necessary tools for civic participation into curricula, performance indicators, sample tasks, and assessments that can be used effectively in the classroom.

B. The Trial Court Meticulously Followed This Court’s Remand Order and Generated Specific Evidence on the Skills that Students Actually Need for Effective Civic Participation

The trial court responded to this Court’s directive to develop a record demonstrating how a “sound basic education” can prepare students for their civic responsibilities by requesting that experts from both parties evaluate an actual ballot referendum presented to New York City voters on November 2, 1999, Court Exh. 4, and actual documents reviewed by jurors in civil cases tried in local courts, Px 1416 – 1421, Px 1867; Px 1867A; Px 1868; Px 1868A-E. Experts were asked specifically whether students in New York City schools were adequately prepared to handle these representative challenges of civic participation. The evidence clearly demonstrated that the answer to this question is “no.”

Dr. Linda Darling-Hammond, the Charles E. Ducommun professor of education at Stanford University and the executive director of the National Commission on Teaching and America’s Future, as well as the chair of the Curriculum and Assessment Council that oversaw the development of New York’s learning standards, testified extensively on the matter. Dr. Darling-Hammond noted that even a relatively basic task asked of jurors, such as comprehending and applying the “preponderance of the evidence” standard, requires that a juror “understand how to weigh the evidence, how to decide what a preponderance of the evidence might mean, what kind of testimony is critical, and how to use the evidence in drawing an opinion.” Darling-Hammond 6516:9-23. She then proceeded to show in detail how the specific skills needed to undertake this complex reasoning process, as well as the skills needed to analyze statistical tables and graphs or basic economics concepts that might arise in trials, are cultivated by the social

studies, English, and mathematics Learning Standards. *See* Darling-Hammond 6517:5-6522:25. Dr. Darling-Hammond concluded that a student whose skills are merely sufficient to pass the Regents Competency Tests (RCTs) or who dropped out without a diploma would be very unlikely to have the relevant skills. *See* Darling-Hammond 6535:9-23. Dr. Darling-Hammond did a similar analysis of the skills necessary to vote competently in general and on the ballot proposition in particular -- identifying an ability to understand the syntax and an understanding of the relevant city government policies as essential -- to again conclude that the middle school level assessed by the RCTs was far from sufficient but that competency on the Regents Learning Standards would be adequate. *See* Darling-Hammond 6472:19-9473:17; 6483:19-6484:13; 6486:5-6491:18.

Dr. Richard Jaeger, a psychometrician and professor at the University of North Carolina, Greensboro, and an expert in validating assessments, also reviewed the sample documents and concluded that jurors and voters need high-level analytic skills and a comfort with relatively complex vocabulary, as well as relevant substantive knowledge.⁴ Jaeger 13446:22-13447:20; 13449:11-18; 13452:17-13453:20 (detailed analysis of the level of vocabulary and underlying content knowledge required by the representative civics documents). Most significantly, Dr. Jaeger determined that because the RCTs test only an ability to “fill in the blank” or to answer basic questions about a single short passage, “even getting a perfect score on the [RCT] test does not require any of the higher order of thinking skills such as analysis or synthesis or evaluation” that are

4. Dr. Jaeger made a distinction between specific scientific, medical, or forensic terms that might be used in a trial which high school students would not be expected to know and comfort with the level of vocabulary that would typically be used on the ballot or in a jury charge. Jaeger 13458:11-20. He noted that the eighth grade level assessed by the RCTs was much lower than either level; a sampling of RCT vocabulary selected at random consisted of entirely familiar everyday words such as “crowd, name, study, touched, organization, fixed, [and] foods.” Jaeger 13441:8-23; Px 2643A.

essential for civic competency. Jaeger 13440:11-13443:5; *see also* 13452:17-13453:20; 13457:7-9; 13458:11-15 (detailed discussion of the skill levels assessed by the tests).

The experts for the defendants who testified on the necessary skills for civic participation treated the question much more superficially. Dr. Herbert Walberg testified that he did “readability” analyses of coverage from various print and television media of elections, of the introductory and closing statements and portions of the sample jury charge, and of the RCTs. *See* Walberg 17181:20-17216:24. He stated that his analysis showed that on average, the media stories, transcripts of the introductory and closing statements, and the introductory portions of the jury charge, as well as the RCTs, tended to be in the 8th or 9th grade range. But this evidence focused solely on the “readability”; Dr. Walberg did not assess the analytic skills or substantive content knowledge that would be required to understand or apply the information. *See* Walberg 17335:15-17336:14.⁵

Dr. Christine Rossell, defendants’ other expert who testified on this point, simply cited various polls demonstrating the most voters receive their election news from media, primarily television, and that they have made up their mind before they reach the voting booth itself. *See generally* Rossell 16870:12-16888:21. Apparently assuming that voters who had seen media coverage of election issues would not find it necessary to read actual language on the ballot, she did not attempt to probe the level of skills required by the representative civic documents in evidence. Nor did she consider the analytic skills

5. It is widely recognized that traditional readability analysis has limited utility because it fails to assess the ability of the reader to process information effectively. *See, e.g.,* Venezky, *The Subtle Danger*, at 12. The national literacy studies therefore rejected use of grade-level assessments as a measure for literacy. *Id.* Indeed, the study results demonstrated (not surprisingly) that “text difficulty, as measured by traditional readability, did not appear to be a useful feature for predicting task difficulty.” *Id.* at 25.

required to understand, assess, and synthesize the media stories voters read or hear. *See* Rossell 17041:19-17042:9.

C. Trial Court Properly Held that New York City Students Do Not Possess the Skills Needed for Effective Civic Participation

After reviewing the extensive evidence presented regarding the preparation that students need for civic engagement, the trial court concluded:

An engaged capable voter needs the intellectual tools to evaluate complex issues, such as campaign finance reform, tax policy, and global warming, to name only a few. Ballot propositions in New York City, such as the charter reform proposal that was on the ballot in November 1999, can require a close reading and a familiarity with the structure of local government.

Similarly, a capable and productive citizen doesn't simply show up for jury service. Rather she is capable of serving impartially on trials that may require learning unfamiliar facts and concepts and new ways to communicate and reach decisions with her fellow jurors. To be sure, the jury is in some respects an anti-elitist institution where life experience and practical intelligence can be more important than formal education. Nonetheless, jurors may be called on to decide complex matters that require the verbal, reasoning, math, science, and socialization skills that should be imparted in public schools. Jurors today must determine questions of fact concerning DNA evidence, statistical analyses, and convoluted financial fraud, to name only three topics.

187 Misc.2d at 14. The trial court's concept of a capable voter or juror does not, of course, mean that such individuals would be expected to know the details of campaign finance reform laws or the scientific research that supports DNA evidence. It does mean, however, that as voters they should have the cognitive skills and the level of knowledge necessary to identify their own political interests, to find information relevant to those interests, and to assess this information, as well as arguments made by candidates, in light of those interests, and that as jurors they should have the ability to comprehend an expert witness's testimony and a judge's instructions and draw logical conclusions.

The Appellate Division, while reaching a radically different assessment of the level of skills necessary, nevertheless recognized the appropriateness of the trial court's holding that a sound basic education requires that students have the skills necessary to be able "to evaluate complex campaign issues, such as tax policy, global warming, and charter reform ... [and] to understand such matters [as DNA evidence or statistical analyses] (by listening and reading), to communicate thoughts to fellow jurors, and to reach decisions." 744 N.Y.S.2d at 137. Similarly, this Court has held that "at a minimum, a juror must be able to understand all of the evidence presented, evaluate that evidence in a rational manner, communicate effectively with the other jurors during deliberations and comprehend the applicable legal principles as instructed by the court." *People v. Guzman*, 76 N.Y.2d 1, 5 (1990).

The record unquestionably supports the trial court's holding that students are not receiving an adequate education to prepare them for these critical civic responsibilities. *CFE*, 187 Misc.2d at 68. The court reviewed in detail extensive testimony demonstrating that chronic under-funding which resulted in an exceptionally high number of uncertified and inexperienced teachers in New York City schools, *id.* at 24-37, decaying and decrepit school facilities, *id.* at 39-49, severe overcrowding throughout much of the district, *id.* at 49-56, and a frequent failure to provide adequate and up-to-date text books, supplies, and instructional technology, *id.* at 56-60, dramatically impeded student learning.⁶ The court also properly held that educational outcomes reveal a wholesale failure of the system.

Even before the Regents phased in the requirement that all students must pass the

6. Testimony on the shortage of "reasonably current textbooks," *CFE I*, 86 N.Y.2d at 317, is particularly salient. Evidence at trial established that although recent funding for textbooks has somewhat alleviated shortages, some students attending New York City schools in the 1990s were studying "the ongoing civil war in Vietnam" from a history textbook published in 1975, Dx 13272 at PCFE 003491, or the "current" Eisenhower administration in a textbook dating back to the 1950s. Evans-Tranumn 1389:16-19.

challenging Regents exams to receive a diploma, New York City had abysmally low graduation rates. At the time of trial, about 30% of students who entered New York City high schools failed to obtain any kind of diploma in seven years; about 10% received only a G.E.D., 48% received a local diploma, and only 12% received a Regents diploma demonstrating proficiency under the standards (and, accordingly, sufficient analytic skills and subject matter knowledge to demonstrate civic competency). *See id.* at 62; Px 2481A; Px 2520.

D. The Appellate Division Had No Evidentiary Basis for its Holding that Eighth-Grade Level Skills Are Sufficient

The Appellate Division was of course bound by this Court’s holding that a “sound basic education” must prepare students to “function productively as civic participants.” 86 N.Y.2d at 316. The Appellate Division also explicitly agreed with the trial court that under this standard schools must adequately prepare students to “*competently* discharge [their] civic responsibilities,” 744 N.Y.S.2d at 138 (emphasis added), and that accordingly students need to be able to understand subjects like DNA evidence or financial fraud. 744 N.Y.S.2d at 137. However, the Appellate Division made the constitutional mandate all but meaningless by improperly holding that the level of skills “imparted between grades 8 and 9” is sufficient, a conclusion it based solely on Dr. Walberg’s testimony regarding the “readability” of articles on campaign and ballot issues and (some portions of) sample jury charges. 744 N.Y.S.2d at 138.

In hanging its decision on this slim evidence, the Appellate Division unjustifiably ignored the extensive, persuasive, and largely undisputed evidence in the record regarding the range of analytic skills, substantive knowledge, and civic values that is necessary for civic competency and that support the trial court’s holding that the

constitutional standard is not being met. Moreover, even with respect to Dr. Walberg's testimony, the Appellate Division's conclusions are facially invalid. As the Appellate Division acknowledged, the newspaper articles that Dr. Walberg considered "range[d] from grade level 6.5 to 11.7," which averaged out to eighth or ninth grade. 744 N.Y.S.2d at 138. Under the Appellate Division's standard, the constitutional minimum would be less than sufficient to permit students to even *read* the more difficult articles that made up the sample. Likewise, Dr. Walberg's analysis of the jury charge included only the introductory material. He did not do a readability analysis of the more specific -- and more challenging -- material at issue in the case itself or attempt to assess the analytic skills that it would require. *See* Walberg 17318:17-17321:15. Jurors, of course, do not have the luxury of considering only half of the charge; their (purported) comprehension of the basic introductory comments would be of little use if they did not have the skills to apply the general principles to the case at hand or to understand the complexity of the specific laws at issue.

More fundamentally, the Appellate Division's reasoning was inconsistent with the reality we face as civic participants. Defendants' experts Dr. Walberg and Dr. Rossell are correct that we learn about election issues largely through the media. But this fact *increases*, rather than decreases, the need for citizens to be able to synthesize various sources of information and assess potential bias to make reasoned judgments.

A vast body of scholarship confirms the common understanding that the media often oversimplifies and distorts issues. In part, this is simply because media sources, particularly television, tend to give very brief coverage to politics. For example, a study from the non-partisan Brookings Institution points out that the average length of a

statement from a presidential candidate on the evening news has decreased dramatically from 43.1 seconds in 1968 to only 8.2 seconds in 1996. *See* Brookings Institution, “Hess Report on Campaign Coverage in Nightly Network News,” *available at* http://www.brookings.org/dybdocroot/gs/projects/hessreport/hd_quantity.htm. Studies also document that the media, again especially television, increasingly focuses more on the “horse-race” aspects of the political campaigning than the underlying substance of the campaign. One recent study found that in the weeks leading up to the 2000 election, less than one-third of election coverage was about the issues, while more than half of the stories were about the internal politics of campaigning. *See* Project for Excellence in Journalism, *The Last Lap: Election Coverage 2000*, *available at* <http://www.journalism.org/resources/research/reports/campaign2000/lastlap/major.asp>. Coverage of state or local issues is even more limited. Since even presidential candidates are reduced to 8-second sentence fragments, voters learn what they can from the reporters who “analyze” and “summarize” the politicians’ positions -- and in so doing, they may insert their own judgments, values, and potential biases. As election issues become increasingly delivered through media pundits, voters need to be sensitive to the distortion such intermediaries add to political coverage and take steps to ensure that they make decisions based on the underlying positions rather than the media spin.

There is extensive evidence, however, that voters are frequently confused by media coverage about the candidates’ positions. This is not surprising, given the brevity of coverage of issues and the considerable spin exerted over how they are presented. In a 1996 poll, a large majority of voters, 68%, reported that they found news media coverage of candidates confusing and unclear. *See* Kenneth Dautrich & Thomas Hartley, *How the*

News Media Fail American Voters: Causes, Consequences, and Remedies 87 (1999).

Voters then reach incorrect conclusions about key issues. For example, a study conducted by the non-partisan Annenberg Public Policy Center just two months before the 2000 presidential election found that four in ten voters incorrectly thought Gore supported private school vouchers; four in ten voters either didn't know or incorrectly believed that Gore supported a larger tax cut than Bush; and four in ten voters either didn't know or incorrectly believed that Gore was "pro-life" and Bush was "pro-choice." Kathleen Hall Jamieson, et al., *Annenberg Survey: Gaps Remain in Voter Knowledge* (Sept. 29, 2000), available at <http://www.appcpenn.org/political/campaign2000/debatereport.pdf>.

Democracy depends on reasoned self-government. Such widespread failure to understand the candidates' positions on key issues threatens the viability of our system.

IV. THIS CASE HAS TRIGGERED A SIGNIFICANT STATEWIDE PUBLIC ENGAGEMENT PROCESS

The national League's *Making Democracy Work* campaign reflects a deep-rooted concern that the foundations upon which American democracy has been built are crumbling. The League's experience has shown, however, that activities demonstrating to "regular" citizens that their ideas and contributions can have a real impact can counter the trends toward citizen apathy. In New York State, the League, working together with the Campaign for Fiscal Equity, the New York State School Boards Association, the New York State PTA, the New York State Business Council, and many other statewide and local organizations, has utilized the enormous interest generated by this litigation to promote a major statewide public engagement process. Public deliberation on the issues raised by *CFE v. State* has allowed citizens to better understand the subjects under review and to provide significant input into the on-going litigation.

This unique experiment in civic participation began shortly after this Court issued its ruling in 1995. In the *CFE I* decision, the Court set forth a template definition of “sound basic education.” Presumably, the expectation was that the attorneys for the parties and their expert witnesses would respond by providing evidence regarding this critical constitutional concept for consideration by the trial judge and eventually by this Court. Early on, however, working with CFE, the League took the position that *all* of the stakeholders affected by this fundamental issue should have an opportunity to participate in dialogue on how “a sound basic education” should be defined.

Accordingly, in conjunction with CFE, we organized a series of statewide forums held during the 1997-98 school year in which we asked participants to consider in depth how they would define a “sound basic education.”⁷ There was a strong consensus in these discussions regarding the need to address explicitly the importance of providing students with the skills they need for competitive employment. There was also widespread agreement that the list of essential resources needed to include measures to promote school safety and expanded programs for at-risk students. These views were later conveyed to the trial judge by witnesses who had participated in the public engagement forums.

In subsequent years, we have worked with CFE to organize additional statewide forums that have promoted extensive discussions on basic principles for reforming the current state education aid formulas and on costing-out principles for ensuring that all

7. These public engagement forums, which typically are a 3-hour evening event in which 75-100 people participate, have been held in dozens of urban, suburban and rural settings over the past five years. They begin with an introduction explaining the significance of the *CFE* litigation but emphasizing that the public engagement forums do not have pre-conceived outcomes and that they do not require any participants to support any party’s position in the case. The bulk of the evening is then spent in small group discussions, led by trained facilitators, followed by a final plenary session that explores areas of possible consensus.

school districts have sufficient resources to meet actual student needs. Last year, in response to the trial court’s remedial guideline calling for a new statewide accountability system, we convened dozens of community conversations on accountability themes. In addition, we mounted a “demonstration school” project in which representative teams of parents, teachers, administrators, students and community representatives from 14 schools around the state held a series of meetings with trained facilitators in which they examined their school’s resource needs and committed themselves to specific education plans and accountability devices that would improve student learning, assuming that the needed resources were obtained. The project culminated with a statewide conference in Albany at which basic principles for a new stateside accountability system were articulated.

This year, together with CFE and other public engagement partners, we are expanding the accountability discussions to encompass entire school districts, in addition to individual schools.⁸ CFE has received a grant from the Legislature to support the expansion of this project. We also initiated a new series of forums that focused public attention on the significance of the lower courts’ holding that students need to be provided skills that will enable them to function as *capable* voters and jurors. The forums began with a candid discussion by students of their attitudes toward voting and jury service. This was followed by facilitated small group discussions that allowed participating adults to react to the students’ views and then asked the whole group to

8. LWVNY, the New York State School Boards Association, and numerous other statewide and local organizations are also supporting a planning process, funded by a grant from the Atlantic Philanthropies, that will enable a number of leading national and New York State education economists to develop specific mechanisms for implementing the trial court’s recommendation that the actual costs of providing the opportunity for a sound basic education in school districts around the state be determined. The statewide costing-out study will include a series of public engagement forums that will provide input on the range of services that are necessary to provide a sound basic education to all students.

explore in depth how schools can provide students with the specific skills they need to function effectively as civic participants.

Our New York State public engagement process has shown how extensive civic participation can be advanced through statewide dialogues organized around the major public policy issues being considered in ongoing institutional reform litigation. We believe that such public engagement processes can also significantly aid effective implementation of appropriate reforms at the remedy stage of such litigation. Public dialogues can provide the legislature, the media, and the attorneys for the parties with detailed information about the complex range of factual and political issues which need to be considered in framing specific reforms, while also educating the public on the significance of the constitutional values that the court seeks to uphold. Public engagement can also promote understanding and consensus-building that will ultimately lead to public acceptance of necessary reforms. *See, e.g.,* Susan Sturm, *The Promise of Participation*, 78 Iowa L. Rev. 981, 1002-07 (1993) (arguing that public deliberation promotes both concrete decision-making and remedial implementation); Jeffrey M. Berry et al., *The Rebirth of Urban Democracy* 209-10 (1993) (finding through study of community decision-making in five American cities that citizen participation builds consensus).⁹ Our public engagement process has laid the ground work for effective implementation of a constructive remedy in this case.

9. Even if a full consensus is not achieved, well-organized public dialogues often result in people finding that they agree on many more issues or aspects of issues than any of them had originally understood. Where disagreement remains, participants often formulate working positions all can endorse, or at least accept, without feeling that they have abandoned their own basic positions. *See* Robert N. Bellah, et al., *The Good Society* 135 (1991), David Mathews, *For Communities to Work* 27-31 (2002), available at http://www.kettering.org/Foundation_Publications/Publication_List/ForCommunitiestoWork.pdf.

V. CONCLUSION

This Court has rightly determined that a “sound basic education” must be sufficient to prepare students for their civic responsibilities. This standard should be more than mere lip service to democratic ideals. This case offers unusually comprehensive evidence about the actual issues we confront as voters and jurors and the actual skills that are necessary to tackle them. The record conclusively establishes that students need a range of analytic skills, substantive knowledge, and civic values to prepare them to be capable jurors, voters, and civic participants. The record also conclusively establishes that students in the New York City schools (and in other districts across the state) are not receiving an adequate education. It is vital to the future functioning of our democracy that this Court ensure that the next generation of jurors and voters -- on whom we will all depend -- receive the opportunity for a sound basic education.

For all of these reasons, the judgment of the Appellate Division should be reversed and the remedial order of the trial court reinstated.

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