

EXHIBIT A

Albany County Index No. 8997-08

Docket No. _____

**NEW YORK SUPREME COURT
APPELLATE DIVISION THIRD DEPARTMENT**

LARRY J. AND MARY FRANCES MAISTO, JULIE RODRIGUEZ, LORI J. COBB, THOMAS POPE, MARK AND JENNIFER PANEBIANCO, GRACE G. JOHNSON, Parents of Students in the Jamestown City School District as Representatives of Their Minor Children, CHRISTOPHER J. FARRELL, Parent of a Student in the Kingston City School District as Representative of His Minor Child, CURTIS L. BREWINGTON, SR., Parents of Students in the Mt. Vernon City School District as Representative of His Minor Children, NELLIE STEWART, ROBIN JOHNSON, EDWARD POPPITI, DAWN FUCHECK, PAMELA R. RESCH, SHARON CURRIE, LEONA M. FREE, ELIZABETH ROBINSON, ZSA ZSA HOLMES, TANISHA JACKSON, ALMETRA MURDOCK, TONIA PARKER, Parents of Students in the Newburgh Enlarged City School District as Representatives of Their Minor Children, DAWN RALPH, Parent of a Student in the Niagara Falls City School District as Representative of Her Minor Child, KELLY DECKER, Parent of a Student in the Port Jervis City School District as Representative of Her Minor Child, SAKIMA A.G. BROWN, Parent of a Student in the Poughkeepsie School District as Representative of Her Minor Child, ALESIA McDANIEL, RHONDA ANGRILLI-RUSSELL, ZULIA MARTIN, Parents of Students in the Utica City School District as Representatives of Their Minor Children,

PLAINTIFFS-APPELLANTS,

- against -

STATE OF NEW YORK,

DEFENDANT-RESPONDENT.

**PROPOSED AMICUS CURIAE BRIEF OF AMERICAN FEDERATION
OF TEACHERS IN SUPPORT OF PLAINTIFFS-APPELLANTS**

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THE INTEREST OF *AMICUS CURIAE*

The American Federation of Teachers (“AFT”), an affiliate of the AFL-CIO, was founded in 1916 and today represents 1.6 million members in approximately 3,500 local affiliates nationwide. AFT represents approximately 850,000 prekindergarten-12 teachers, most of whom work in public schools and many in challenging low-income urban and rural districts.

Since its founding in 1916, the AFT has been a major force for protecting America’s commitment to public education and strengthening and improving public education. AFT’s leadership and members have traditionally and actively promoted broad reform approaches to ensure excellence and equity in education and to improve the quality of public schools for students and their communities.

AFT recognizes that our public schools represent our nation’s commitment to helping all children dream their dreams and to acquire the skills to achieve those dreams. A high-quality public education for all children is an economic necessity, an anchor of democracy, a moral imperative and a fundamental civil right. Thus, the resolution of this case is a matter of vital concern to the AFT.

In 2007, in response to the New York Court of Appeals’ determination in *Campaign for Fiscal Equity, Inc. v. State of New York* that the State’s then-existing funding system for public education was unconstitutionally inadequate with respect to New York City, the State legislature implemented the Foundation Formula Aid, an aid program that promised an increase in funding of \$5.5 billion for the State that would be provided to school districts over the course of four

years. In 2009, the state legislature reduced school aid funding when it indefinitely froze the funding increases in state school aid. In the following year, the State enacted the Gap Elimination Adjustment, which resulted in further cuts to funding for public education. These cuts caused a loss of approximately 1.1 billion dollars for the city school districts at issue in this case (the “small city districts”). As a result, the small city districts were not able to provide the services and programs required for a constitutionally adequate public education to all of their students.

The trial court in this case did not follow legal precedent established by the New York Court of Appeals for determining whether the State is meeting its constitutional burden to provide a sound basic education. In doing so, the court improperly held that the plaintiff-appellants did not establish that the State failed to provide a sound basic education to children living in the small city districts. If the decision is upheld, AFT members will be left without the resources required to meet the educational needs of their students. *Amicus curiae* thus respectfully urges reversal in this case.

PRELIMINARY STATEMENT

Every child in New York has a right to a free and sound basic education under the state constitution. Yet, so many children come to school without their basic educational needs being met. Representing over 345,000 employees supporting K-12 students in New York, *amicus curiae* the American Federation of

Teachers respectfully submits this brief to address the extent to which the State has a constitutional obligation to provide a sound basic education when such attainment is affected by poverty.

First, the trial court incorrectly rejected the plaintiff-appellants' attempt to provide remedies that would address poverty, and other socioeconomic barriers to education, as a means for ensuring that "at-risk" students, those children affected by such challenges, attain a sound basic education as required by the New York Constitution. The Court of Appeals has clearly established that the individual needs of disadvantaged children must be addressed through additional tailored services in order to provide a sound basic education. Courts from other jurisdictions have reached similar conclusions. Accordingly, the trial court's opinion is in direct conflict with New York precedent and several other state high court decisions.

Second, an extensive body of research supports the Court of Appeals' call for additional services and programs for at-risk students. Research demonstrates that infusions of funding into districts and the provision of both academic and nonacademic resources through an "expanded platform" of services have a positive effect on student performance. The positive correlation between adequate funding and improved student outcomes is even more significant for socioeconomically disadvantaged children. These studies, as discussed in this brief, establish that through adequate funding and appropriate resources, the children of New York can be afforded a sound basic education.

Third, the long-term consequences of the State's refusal to provide a sound basic education are significant for socioeconomically disadvantaged children. Children in the small city districts are dropping out of high school and not graduating at rates that far exceed the State's average. Indeed, since the State reduced educational funding, the student graduation rate has fallen in several of the small city districts. Such failure to graduate is a predictor for further poverty, and thus perpetuates and reinforces the challenges that educators face in meeting the educational needs of their students.

STATEMENT OF THE FACTS

Amicus hereby adopts the Statement of the Facts and Procedural History contained in the brief of the Plaintiffs - Appellants.

ARGUMENT

- I. **LEGAL PRECEDENT DICTATES THAT A SOUND BASIC EDUCATION CAN NOT BE FULLY REALIZED WITHOUT ADDRESSING THE NEEDS OF STUDENTS AFFECTED BY POVERTY.**
 - a. **New York legal precedent establishes that school districts have a responsibility to address external socioeconomic factors when they affect a child's ability to learn.**

The trial court improperly criticized the plaintiff-appellants for seeking remedies that address the individualized needs of students that are affected by external non-academic factors, including concentrated poverty, as a means for

attaining a “sound basic education”¹ for New York children under the state constitution. *See* N. Y. Const. art. XI §1. The court characterized the remedies that the plaintiff-appellants proposed as “seem[ing]to depart from the basic educational purpose and attempt[ing] to solve the socioeconomic², cultural, and other aspects of these students’ circumstances that impact their lives in so many ways, including their ability to successfully move through the educational system.” Trial Court Decision (R. 20-21).³

Disregarding such factors insomuch as they affect student outcomes flies in the face of the State’s constitutional mandate to educate every child in New York. The Court of Appeals agrees. The court in *Campaign for Fiscal Equity, Inc. v. State* held that despite the negative impact of a child’s “socioeconomic deficits” on learning, the opportunity for a sound basic education must still “be placed within reach of all students.” *Campaign for Fiscal Equity, Inc. v. State* (hereinafter “*CFE IP*”), 100 N.Y.2d 893, 915, 920 (2003), quoting *Campaign for Fiscal Equity, Inc. v. State*, 187 Misc.2d 1, 63 (Sup. Ct. 2001). The Court rejected the State’s argument that school districts are not responsible for addressing poor student outcomes affected by socioeconomic factors. *Id.*

¹ In *Bd. of Educ., Levittown Union Free Sch. Dist. v. Nyquist*, 57 N.Y.2d 27 (1982), the Court of Appeals defined the term “educated” as used in the New York constitution’s mandate that the every child in the state must be educated as meaning a “sound basic education.”; N. Y. Const. art. XI §1.

² For the purpose of this brief, *amicus* relies on Duncan, Featherman, and Duncan’s definition of socioeconomic status as incorporating parental income, parental education, and parental occupation as the three main indicators of socioeconomic status. Otis D. Duncan et al., *Socio-economic background and achievement*, NY:Seminar Press (1972).

³ Cites to the Record will appear as “R,” to the Court’s Trial Exhibits will appear as “C.X,” and to Plaintiffs’ Exhibits will appear as “P.X.”

The parties agree that the small city districts are “high-need, based upon the demographics” of the children in the districts. Trial Court Decision (R. 12). The overwhelming majority of the children are “economically disadvantaged” and living in concentrated poverty. *Id.* The social, emotional, mental, and health problems that are associated with living in high concentrations of poverty contribute to poor academic performance. For a discussion of the effects of poverty on students and their ability to learn, see Laurence Spring, Plaintiffs’ Expert Witness Statement, November 12, 2014. (C.X. 24). As the trial court noted, the parties also “generally agree that children with higher needs often require programs to address the problems that their situations and circumstances create.” (R. 12).

The plaintiffs-appellants’ prayer for funding that would enable school districts to meet educational challenges that are brought on by socioeconomic factors comports with the Court of Appeals’ belief that all children can learn when given “appropriate instructional, social, and health services.” 100 N.Y.2d at 914, citing the Regents of the University of the State of New York and the State Education Department’s 655 Report for 1999. Most importantly, the Court explicitly rejected “the premise that children come to the New York City schools ineducable, unfit to learn” because of “socioeconomic disadvantage.” *Id.* at 921. Accordingly, the State has a responsibility to develop a public education system that is adapted to adequately address the learning barriers of each individual child, regardless of the socioeconomic factors that may be a cause of such setbacks.

b. Courts from other states have given significant weight to socioeconomic factors, specifically poverty, as an impediment to learning and have considered the high needs of low-income students in fashioning remedies.

State courts outside of New York have also acknowledged the detrimental effect of living in poverty on educational attainment⁴ and thus the need for additional resources to adequately service high-needs, low-income children at school so that they may have a “meaningful educational opportunity.” Michael Rebell, *Poverty, "Meaningful" Educational Opportunity, and the Necessary Role of the Courts*, 85 N.C. L. Rev. 1467 (2007) (discussing the opinions of several state courts ordering additional resources specifically to address the needs of low-income students).

In the landmark school funding adequacy case, *Abbott v. Burke*, the New Jersey Supreme Court rejected the argument that some children because of deficiencies related to their economic status will never be able to perform as well as their wealthier peers:

We have decided this case on the premise that the children of poorer urban districts are as capable as all others; that their deficiencies stem from their socioeconomic status; and that through an effective education and changes in their socioeconomic status, they can perform as well as others. *Abbott by Abbott v. Burke* (“*Abbott I*”), 119 N.J. 287, 340, 575 A.2d 359, 385-86 (1990).

⁴ As used by most statisticians and researchers, “educational attainment” refers to the highest level of education that an individual has completed. United States Census Bureau, <https://www.census.gov/hhes/socdemo/education/> (last accessed on March 9, 2017).

The court found that the “level of funding” must address the “special educational needs” of the “urban poor”:

conventional education is totally inadequate to address the special problems of the urban poor. Something quite different is needed, something that deals not only with reading, writing, and arithmetic, but with the environment that shapes these students' lives and determines their educational needs...They need more, and the law entitles them to more. *Id.* at 372.

Eight years after *Abbott I* was decided, the New Jersey Supreme Court ordered specific remedies tailored to meet the needs of economically disadvantaged children in *Abbott V. Abbott by Abbott v. Burke* (“*Abbott V*”), 153 N.J. 480, 503, 710 A.2d 450, 462, (1998) *opinion clarified sub nom. Abbott ex re. Abbott v. Burke*, 164 N.J. 84, 751 A.2d 1032 (2000). In order to address the need for better language development at an early age among poor children in urban communities, the court ordered full-day kindergarten for children that lived in the Abbott districts relying on the empirical data that supported “the essentiality of pre-school education for children in impoverished urban school districts.” *Id.*

More than two decades after *Abbott I*, courts continue to order states to address the needs of students affected by poverty. For example, in 2004, the Supreme Court of North Carolina held that the State was ultimately responsible “to meet the needs of ‘at-risk’⁵ students in order for such students to avail

⁵ The North Carolina Supreme Court described “at-risk” students as generally holding or demonstrating “one or more of the following characteristics: (1) member of low-income family; (2) participate in free or reduced-cost lunch programs; (3) have parents with a low-level education; (4) show limited proficiency in English; (5) are a member of a racial

themselves of their right to the opportunity to obtain a sound basic education.”
Rebell at 1504, citing *Hoke County Bd. of Educ. v. State*, 358 N.C. 605, 640, 599
S.E.2d 365, 392 (2004). In the following year, the state supreme court in Kansas,
acknowledging the greater needs of “districts with high-poverty, high at-risk
student populations,” indicated that they “need additional help attracting and
retaining teachers.” *Montoy v. State*, 279 Kan. 817, 835, 112 P.3d 923, 935 (2005).

In 2014, the South Carolina Supreme Court held that “the effect of poverty
on student achievement must be considered in deciding” whether the children
living in the Plaintiff districts were being provided an adequate education.
Abbeville Cty. Sch. Dist. v. State, 410 S.C. 619, 654, 767 S.E.2d 157, 175–76
(2014) *amended*, 414 S.C. 166, 777 S.E.2d 547 (2015), *order superseded*, 415
S.C. 19, 780 S.E.2d 609 (2015), and *amended*, 415 S.C. 19, 780 S.E.2d 609
(2015). The court affirmed the trial court’s holding that the “State’s failure to
address the effects of pervasive poverty on students within the plaintiffs’ school
districts prevented those students from receiving the required opportunity.” *Id.* at
158.

Like New York, the North and South Carolina as well as Kansas and New
Jersey state supreme courts recognize that a State may not shirk its duty to provide
a constitutionally adequate level of education when a child’s ability to learn is

or ethnic minority group; (6) live in a home headed by a single parent or guardian.” *Hoke*
Cty. Bd. of Educ. v. State, 599 S.E.2d 365, 390, footnote 16 (2004)

affected by socioeconomic factors, such as poverty. Every challenge to educational attainment must be met.

II. THE EFFECTS OF POVERTY ON EDUCATIONAL ATTAINMENT CAN BE REDUCED THROUGH THE PROVISION OF ADEQUATE RESOURCES AND FUNDING.

a. Adequate funding improves educational outcomes for economically disadvantaged students.

Research demonstrates that infusions of funding into low-performing school districts, such as the small cities districts, are impactful and improve educational outcomes for students living in poverty. In 1986, Eric Hanushek, the State's expert witness in this case, published a meta-analysis that concluded increased spending in isolation does not necessarily improve school quality and student outcomes. Hanushek found no "strong or systematic relationship between" spending and student outcomes. Eric Hanushek, *Economics of Schooling: Production and Efficiency in Public Schools*, Journal of Economic Literature 24, no. 3 at 1141-1177 (Sept. 1986). Since Hanushek's paper was first published, Hanushek's peers have discredited his initial findings questioning the accuracy of the economist's data and limitations of the methods employed at the time. See David Grissmer et al., *Does Money Matter for Minority and Disadvantaged Students? Assessing the New Empirical Evidence*, in *Developments in School Finance*, 1997, at 98-212 (William Fowler ed., 1998).

Combining data from multiple studies that Hanushek relied on in his original 1986 report, a group of academics found that in the majority of studies

reviewed, findings related to aggregate per-pupil spending increases and outcomes were overwhelmingly positive and statistically significant. Rob Greenwald, et al., *The Effect of School Resources on Student Achievement*, Review of Educational Research 66, no. 3 at 361-396 (1996); See also Harold Wenglinsky, *How Money Matters: The Effect of School District Spending on Academic Achievement*, Sociology of Education 70, no. 3 at 221-237 (1997) (finding that “per-pupil expenditures for instruction and the administration of school districts are associated with [higher student] achievement because both result in reduced class size, which raises achievement.”).

Looking at the effect of school finance reforms that resulted in additional funding, researchers have found similar positive correlations between funding and student performance. For example, in a 2015 study published by the National Bureau of Economic Research (“NBER”), increases in state-provided funding to local school districts through school finance reforms from 1970 through 2010 proved to result in better educational outcomes for school-aged children. C. Kirabo Jackson et al., *The Effects of School Spending on Educational and Economic Outcomes: Evidence from School Finance Reforms*, 131 Q.J. Econ. 157 (2016) (the “Jackson Study”). Such changes in outcomes were most significant for low-income children. Specifically, a 10 percent increase in per-pupil spending increases educational attainment by .46 additional years and “the probability of high school graduation by 9.8 percentage points” for low-income children. *Id.* at 192-193. Most remarkably, the Jackson Study concluded that “a 25 percent

increase in per-pupil spending throughout one's school years" would have the effect of "eliminat[ing] the education gap between children from low-income and non-poor families." *Id.* at 160.

State specific studies of school finance reforms substantiate the Jackson research regarding the impact of funding on educational attainment. *See e.g.*, Bruce Baker, *Does Money Matter in Education?* at 11-12 (Albert Shanker Institute, 2nd ed. 2016), citing Leslie Papke, *The Effects of Spending on Test Rates: Evidence from Michigan*, *Journal of Public Economics* 89, no. 5-6 at 821 (2005) (evaluating Michigan school finance reforms of the 1990s, found that "increases in spending have nontrivial, statistically significant effects on math test pass rates, and the effects are largest for schools with initially poor performance"); John Deke, *A Study of the Impact of Public School Spending on Postsecondary Education Attainment Using Statewide School District Refinancing in Kansas*, *Economics of Education Review* 22, no. 3 at 275 (2003) (peer-reviewed article analyzing the effect of school finance reform in Kansas found that "using a conservative estimate, a 20 percent increase in spending raises the probability of going on to a postsecondary education by approximately 5 percent"); Phuong Nguyen-Hoang, et al., *Education Finance Reform, Local Behavior, and Student Performance in Massachusetts*, *Journal of Education Finance* 39, no. 4 at 297 (2014) (article concluding that student performance, as measured by test scores, was boosted significantly both by the increase in the Massachusetts state aid budget and by the formula revisions that shifted aid toward high need districts in

the state). Indeed, the New York Board of Regents found in an examination of school district spending and student achievement as measured by grade 4 English Language Arts test results that “the more the school district spends, the greater the pupil achievement.” James A. Kadamus, “Regents Proposal on State Aid to School Districts for 2004-05,” The State Education Department (January 2004).

Most recently, another study published by the NBER in July 2016, reached similar conclusions to the Jackson Study. This study conducted a comparative analysis of 26 states that have changed the way they fund schools since 1990, specifically by increasing funding for the poorer districts, and 23 states that have not. Julien Lafortune, et al., *School Finance Reform and the Distribution of Student Achievement* (Nat’l Bureau of Econ. Research, Working Paper No. 100-16, July 2016) (the “Lafortune Study”); *see also* Kevin Carey et al., *The Power of Money in Schools*, N.Y. Times, Dec. 13, 2016, at A3. As was concluded by the Jackson Study, “spending was productive.” Lafortune at 31. Using individual student scores from the National Assessment of Educational Progress (“NAEP”), a nationwide test administered by the Department of Education, the Lafortune Study found that “[i]n the long run, over comparable time frames, states that send additional money to their lowest-income school districts see more academic improvement in those districts than states that don’t.” Carey at A3. The authors of the study thus concluded that “money can and does matter in education.” Lafortune at 33.

b. An expanded educational platform of resources, services and programs provide at-risk students affected by poverty with the means to attain a sound basic education.

Adequate funding matters in education because it provides costly, but necessary comprehensive educational resources and support services to students. As a result of the state's decision to freeze funding of the Foundation Formula Aid, the eight small city districts have been dealt a blow to their ability to provide their students with a sound basic education. They are overstretched and under-resourced. As detailed in the Plaintiffs-Appellants' brief and at trial, districts lost staff in high numbers and thus were not able to provide their students with essential educational supports, such as special education programs, academic and behavioral intervention services, services for English language learners and early literacy intervention. Class sizes increased, early childcare programs and alternative education programs were cut and professional development was not provided to assist educators in addressing the needs of at-risk students. Such losses and cutbacks translated into poor academic outcomes for students attending the small district schools. In the time that the State cut its educational funding, graduation rates dropped in many of the districts. (R. 27.176, 27.178, 27.181). In addition, the overwhelming majority of students (in grades 3-8) did not demonstrate proficiency in math and English Language Arts. (R. 27.185-27.202; P.X. 1-3, 7, 45, 50, 56, 74, 79.) The State's experts acknowledge that these performance levels are unacceptable. (R. 3636-3637, 3722, 3761, 3763, 3884, 3983, 4123, 4125, 4844-4846).

One of the strongest predictors of academic success is a student's income level. See Julian Betts, et al., *Equal Resources, Equal Outcomes? The Distribution of School Resources and Student Achievement in California*, Public Policy Institute of California, at 222 (2000). Many poor children come to school burdened with greater needs because of their environment at home and in their neighborhoods. See e.g. Richard Rothstein, *Whose Problem is Poverty?*, *Educational Leadership* 65, no 7, at 8-13 (2008) (less exposure to high literacy environments); Yasemin Ozkan et al. *Interpersonal Impact of Poverty on Children*, *International Journal of Academic Research* 2, no. 6, at 172-179 (2010) (endured stress caused by a lack of stable housing contributes to disrupted instruction and excessive absenteeism); Alan Ginsburg et. al, *Absences Add Up: How School Attendance Influences Student Success* (August 2014), available at http://www.attendanceworks.org/wordpress/wp-content/uploads/2014/09/Absences-Add-Up_September-3rd-2014.pdf (last accessed on March 9, 2017) (illnesses and health conditions stemming from poor health for low-income children translates to chronic absenteeism in school and thus lower student outcomes). The social science evidence thus demonstrates an even greater need for comprehensive resources and additional services for low-income/high-needs students, like those that attend schools in the small city school districts, so that they may achieve academic success.

Indeed, children from low-income families respond positively to costly “school-related interventions” and “increases for instruction and support services.”

Jackson at 192, 209. For example, one study found that an increase in teacher's wages by 10 percent reduces dropout rates by between 3% and 4%. Susanna Loeb et al., *Examining the Link Between Teacher Wages and Student Outcomes: The Importance of Alternative Labor Market Opportunities and Non-Pecuniary Variation*, *Review of Economics and Statistics* 82, no. 3 at 393 (2000). This correlation between teacher wages and educational attainment can be attributed to the positive effect that teacher quality and workforce stability has on academic outputs. National Commission on Teaching and America's Future, *What Matters Most: Teaching for America's Future* (1996); Matthew Ronfeldt et al., *How Teacher Turnover Harms Student Achievement*, *American Educational Research Journal* 50, no. 1 at 4-36 (2013). By increasing teacher quality and reducing teacher turnover, competitive teacher wages positively impact student outcomes.

Low-income students also benefit academically from a larger teaching workforce resulting in smaller class sizes. See Spyros Konstantopolous et al., *What are the Long-Term Effects of Small Classes on the Achievement Gap? Evidence from the Lasting Benefits Study*, *American Journal of Education* 116, no.1 at 125 (November 2009) (found that “[l]onger periods in small classes produced higher increases in achievement in later grades for all types of students.”). When the legislature in Tennessee reduced class sizes for the states' poorest school districts, students from these communities made significant gains. Grissmer at 25. The affected poor districts improved from “below average to above average in reading and mathematics.” Frederick Mosteller, *The Tennessee Study of Class Size in the*

Early School Grades, *The Future of Children* 5, no. 2 at 113 (1995). Observations of smaller classroom settings indicate that reducing a class size is effective because it allows more time for instruction and personalized student engagement and reduces classroom disciplinary issues. Mosteller at 125; Diane W. Schanzenbach, *Does Class Size Matter?* National Education Policy Center at 3, 6, available at <http://nepc.colorado.edu/publication/does-class-size-matter> (last accessed on March 9, 2017). The individualized needs of students are thus more efficiently met through smaller class sizes.

An expanded platform of resources in the form of “wraparound services” yields significant educational benefits for low-income students as well. Wraparound services are individualized supports and services directed at both the at-risk student and his or her family to achieve positive student outcomes at school. Barbara Burns et al. eds., *Promising Practices in Wraparound for Children with Serious Emotional Disturbance and their Families*, Vol. IV, Center for Effective Collaboration and Practice, American Institutes for Research (1999). An essential element of wraparound programs is its reliance on familial and student engagement and collaboration in developing a beneficial educational program for the student in need. Lucille Eber, *Wraparound: A Key Component of School-Wide Systems of Positive Behavior Supports*, in *The Resource Guide to Wraparound* (E.J. Bruns & J.S. Walker eds. 2008). Wraparound programs are comprehensive and address both the academic and nonacademic needs of students including health, safety, social, emotional and cultural challenges. Examples of

wraparound services include academic interventions, guidance counseling, mental healthcare, medical and dental care, and nutrition programs.

Case studies demonstrate that when such integrated support services are provided to low-income districts, students do better. For example, in Oklahoma, the Tulsa Area Community School Initiative (TACSI) eliminated “the achievement gap in standardized math scores between low-income students and high-income peers, while reducing the gap in reading by 76 percent” by providing services that “include youth development, family support and engagement, and health and wellness supports,” at its developed sites. Colin A. Jones, *Uplifting the Whole Child: Using Wraparound Services to Overcome Social Barriers to Learning*, Massachusetts Budget and Policy Center at 5, available at <https://www.nmefoundation.org/getmedia/ffbf6223-f6d4-49fa-91d6-1d8ff14e21d8/UpliftingTheWholeChild?ext=.pdf> (last accessed on March 9, 2017). Low-income students actually performed better than their wealthier peers in math by three points. *Id.*

In a state level driven approach⁶ to provide wraparound services, California was able to significantly increase GPAs and academic proficiency by 25 percent in reading and 50 percent in math in the lowest performing schools. *Id.* at 6. Services provided were “school based health clinics, mental health services, case management, adult education, and supports for basic needs such as food and

⁶ The state “provided \$88,000 planning grants and \$700,000 operating grants to local consortiums creating wraparound services tailored to specific high-poverty communities.” Jones at 6.

clothing.” *Id.* The effect of these services also decreased the “mobility rate” and thus “the percentage [of] students leaving schools, suggesting enhanced family stability.” *Id.*

Reviewing the relationship between access to school counselors and academic performance in Missouri high schools, one study found that students in high-poverty schools “who have greater access to school counseling and comprehensive school counseling programs are more likely to succeed academically and behaviorally in school.” American School Counselor Association, *Empirical Research Studies Supporting the Value of School Counseling*, available at <https://www.schoolcounselor.org/asca/media/asca/Careers-Roles/Effectiveness.pdf> (last accessed on March 9, 2017) (discussing Richard Lapan, et al. *Missouri Professional School Counselors: Ratios Matter Especially in High-Poverty Schools*, *Professional School Counseling* 16, no. 2 at 108-116 (2012)); see also Pamela Davis, et al., *The School Counselor’s Role in Addressing the Advanced Placement Equity and Excellence Gap for African-American Students*, *Professional School Counseling* 17, no. 1 at 32-39 (Jan. 2013) (study concluded that “[i]ntentional efforts by school counselors can help reduce racial disparities in proportions of students taking Advance Placement courses”).

These positive results from case studies are supported by growing evidence found in a recent analysis demonstrating that an expanded platform of services through a wraparound educational program “can contribute to student academic

progress as measured by decreases in grade retention and dropout, and increases in attendance, math achievement, reading and ELA achievement, and overall GPA.”

Kristen Moore et al., *Integrated Student Supports: A Summary of the Evidence Base for Policymakers*, Child Trends, White Paper (February 2014), available at <http://www.childtrends.org/wp-content/uploads/2014/02/2014-05ISSWhitePaper3.pdf> (last accessed on March 9, 2017); see also J. C. Suter et al. *Effectiveness of the Wraparound Process for Children with Emotional and Behavioral Disorders: A Meta-Analysis*, *Clinical Child and Family Psychology Review* 12, no. 4 at 336-351 (2009); E. J. Bruns et al., *Summary of the Wraparound Evidence Base*, in *The Resource Guide to Wraparound* (J. Bruns & J.S. Walker eds. 2010).

Wraparound programs in schools work for students affected by poverty because they consider the academic, social, behavioral, and health factors that are often responsible for the educational challenges that poor children have in the classroom. See Martin Blank, et al. *Making the Difference: Research and Practice in Community Schools*, Coalition for Community Schools (2003), available at <http://www.communityschools.org/assets/1/Page/CCSFullReport.pdf>. (last accessed on March 9, 2017). “[I]ntellectual, physical, psychoemotional and social” competency correlates with academic success. *Id.* (citing a 2002 report from the National Research Council).

III. THE LONG-TERM CONSEQUENCES OF THE STATE'S REFUSAL TO PROVIDE A SOUND BASIC EDUCATION ARE SIGNIFICANT FOR CHILDREN AFFECTED BY POVERTY.

Underfunding of the Maistro districts not only violates the plaintiffs-appellants' right to a sound basic education, but it also presents dire consequences for many of the districts' children in the long-term by perpetuating the cycle of poverty.

The New York Court of Appeals defines a sound basic education as “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* (“*CFE I*”), 86 N.Y.2d 307, 316 (1995). The Court of Appeals in *CFE II* expanded on that definition and concluded that a “sound basic education” also implied the ability to be able to function productively in the labor force:

“[w]hile a sound basic education need only prepare students to compete for jobs that enable them to support themselves, the record establishes that for this purpose a high school level education is now all but indispensable...manufacturing jobs are becoming more scarce in New York and service sector jobs require a higher level of knowledge, skill in communication and the use of information and the capacity to continue to learn over a lifetime.” *CFE II*, 100 N.Y.2d 893, 906, 801 N.E.2d 326, 331 (2003).

As one of the justices in the *CFE II* case concluded after review of the arguments and evidence on appeal, when meeting the educational needs of low-income children, “more is required.” *Id.*; Smith, J., concurring opinion (finding

that “[a]ll the children of New York are constitutionally entitled to the opportunity of a high school education—up to the 12th grade—that imparts the skills necessary to sustain competitive employment within the market of high school graduates, acquire higher education, and serve capably on a jury and vote”).

The data suggests that the small city districts are failing to meet *CFE’s* mandate that the public education system enable students to be able to function productively in the labor force. The poor small city districts are plagued with significantly high drop-out⁷ and low graduation rates.⁸ Sustainability in the labor force is significantly impaired when a student drops out or does not graduate from high school. Individuals who do not graduate from high school are less likely to participate in the workforce and be employed. For example, in 2014, the labor-force participation rate – the proportion of the population either working or actively seeking work – for recent dropouts (41%) was much less than that for recent high school graduates not enrolled in college (73%). *Employment and unemployment of recent high school graduates and dropouts*, U.S. Bureau of Labor Statistics (July 2015) https://www.bls.gov/careeroutlook/2015/data-on-display/dod_q4.htm (last accessed on March 9, 2017). In that same year, the percentage of employed recent high school graduates not enrolled in college was

⁷ The small city districts in this case have high dropout rates, with every District far exceeding, and in many cases more than double, the state average for 2013-14 (7%): Jamestown: 16%; Kingston: 13%; Mt. Vernon: 10%; Newburgh: 11%; Niagara Falls: 22%; Port Jervis: 15%; Poughkeepsie: 24%; Utica: 15%. (P.X. 1-3, 7, 45, 50, 56, 74, 79).

⁸ For the 2013-14 school year, the graduation rates were: 72% in Jamestown; 76% in Kingston; 48% in Mt. Vernon; 67% in Newburgh; 60% in Niagara Falls; 75% in Port Jervis; 57% in Poughkeepsie; 58% in Utica. (P.X. 1-3, 7, 45, 50, 56, 74, 79).

twice as much as the percentage of recent dropouts. *Id.* Over fifty (50) percent of recent high school graduates were currently working while only 28.7% of recent high school dropouts were employed. *Id.* This data from 2014 is consistent with the U.S. Bureau of Labor Statistics' (BLS) findings in an analysis of unemployment rates⁹ and educational attainment over a ten year period from 2003-2013. *More Education, Less Employment*, Occupational Outlook Quarterly (Spring 2014) <https://www.bls.gov/careeroutlook/2014/spring/oochart.pdf> (last accessed on March 9, 2017). During that decade, people with lower levels of education consistently had higher rates of unemployment than people with higher levels of education. *Id.*

High educational attainment also leads to higher wage earnings. From 1995-2014, young adults, ages 25-34, who did not graduate from high school earned less than their higher educated peers each year. U.S. Department of Education, National Center for Education Statistics, Digest of Education Statistics, Table 502.30, https://nces.ed.gov/programs/digest/d15/tables/dt15_502.30.asp (last accessed on March 9, 2017). In 2015, full-time workers age 25 and over and without a high school diploma earned a median weekly income (\$493) of 42% less than that of all other full-time workers. Dennis Vilorio, *Education Matters*, U.S.

⁹ The unemployment rate is the percentage of the labor force that is currently not employed, but available for work and actively looking for work in the prior 4 weeks. The rate does not include the percentage of people who would like a job but are not actively looking for one. *More education, Less employment*, available at <https://www.bls.gov/careeroutlook/2014/spring/oochart.pdf> (last accessed on March 9, 2017).

Department of Labor, Bureau of Labor Statistics (March 2016), available at <https://www.bls.gov/careeroutlook/2016/data-on-display/education-matters.htm> (last accessed on March 9, 2017). In contrast, workers with high school diplomas earned (\$678) only 21% less than all other workers. *Id.* According to a report from the Congressional Research Service, in 2013, high school dropouts aged 25 to 34 years old were almost twice as likely to be living below the poverty line as those holding high school degrees. Thomas Gabe, *Poverty in the United States: 2013*, Congressional Research Service (2015), available at <https://fas.org/sgp/crs/misc/RL33069.pdf> (last accessed on March 9, 2017). In due course, low educational attainment results in considerably less earnings over a lifetime and a greater likelihood of living in poverty. Center for Labor Market Studies, *Left Behind: The Nation's Dropout Crisis* (2009), available at https://repository.library.northeastern.edu/downloads/neu:376318?datastream_id=conten (last accessed on March 9, 2017).

The long-lasting effect of underfunding public education on disadvantaged children is profound. By creating a cycle of poverty, inadequate funding of schools perpetuates the socioeconomic factors, as discussed herein that contribute most to the challenges that educators face in meeting the basic educational needs of their students.

CONCLUSION

For the reasons stated above, amicus curiae the American Federation of Teachers respectfully urge this Court to reverse the trial court's decision.

Dated: March 10, 2017
Washington, D.C.

THE AMERICAN FEDERATION OF
TEACHERS

A handwritten signature in black ink that reads "Channing M. Cooper". The signature is written in a cursive style and is positioned above a horizontal line.

CHANNING M. COOPER

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