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SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: THIRD DEPARTMENT

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LARRY J. AND MARY FRANCES MAISTO, et al.,

*Plaintiffs-Appellants,*

-against-

STATE OF NEW YORK,

*Defendant-Respondent.*

Albany County  
Index No. 8997-08

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BRIEF OF *AMICI CURIAE* OF THE  
NEW YORK STATE SCHOOL BOARDS ASSOCIATION, INC.  
NEW YORK STATE COUNCIL OF SCHOOL SUPERINTENDENTS  
NEW YORK STATE CONGRESS OF PARENTS AND TEACHERS

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## INTEREST OF THE *AMICI CURIAE*

The New York State School Boards Association, Inc., the New York State Council of School Superintendents and the New York State Congress of Parents and Teachers (hereinafter also referred to as “NYSSBA”, “the Council” or “New York State PTA” respectively, or as “the *amici*” or the “*amici curiae*” collectively) submit this brief *amici curiae* on the grounds that the issues presently before the court are of statewide importance to all school districts and public school students throughout New York, and the *amici* will invite the court’s attention to law and arguments that might otherwise escape its consideration and be of special assistance to the court.

NYSSBA is a not-for-profit membership organization incorporated under the laws of the State of New York. Its membership consists of approximately six hundred and sixty-five (665) or ninety-one percent (91%) of all public school districts and boards of cooperative educational services (BOCES) in New York State.

Pursuant to § 1618 of New York’s Education Law, NYSSBA has the responsibility of devising practical ways and means for obtaining greater economy and efficiency in the administration of the affairs and projects of New York’s public school districts, on behalf of school districts and BOCES across the State. Consistent with that charge, NYSSBA often appears as *amicus curiae* before both federal and state court proceedings involving constitutional and statutory issues affecting public schools, and indeed has done so previously before this court.

At the state level, some of the more recent of such proceedings include: *Highbridge Broadway, LLC v. Assessor of City of Schenectady*, 27 N.Y.3d 450 (2016); *Santer v. Bd. of Educ. of East Meadow Union Free School Dist.*, 23 N.Y.3d 251 (2014); *Kolbe v. Tibbetts*, 22 N.Y.3d 344 (2013); *Matter of the Arbitration between Shenendehowa Cent. School Dist. Bd. of Educ. v. Civil Service Employees Ass’n., Inc.*, 20 N.Y.3d 1026 (2013); *Matter of North Syracuse Cent.*

*School Dist. v. New York State Div. of Human Rights*, 19 N.Y.3d 481 (2012); *Regional Economic Community Action Program, Inc. v. Enlarged City School Dist. of Middletown*, 18 N.Y.3d 474 (2012); *Baker v. Poughkeepsie City School Dist.*, 18 N.Y.3d 714 (2012); *Meegan v. Brown*, 16 N.Y.3d 395 (2011); *The Gerry Homes v. Town of Ellicott, et al.*, 145 A.D.3d 1652 (4<sup>th</sup> Dep't 2016); *Lawrence Teachers Association, NYSUT, AFT, NEA, AFL-CIO v. New York State Public Employment Relations Board* (Albany County Clerk's Index No. 3495-15 currently pending before this court); *Cronk v. John B. King, Comm'n'r of Educ. of the State of N.Y. et al.*, 130 A.D.3d 1415 (3<sup>rd</sup> Dept. 2015), *Erie 2-Chautauqua-Cattaraugus Board of Cooperative Educational Services (BOCES) v. Parke R. Brown*, 133 A.D.3d 1146 (3<sup>rd</sup> Dep't 2015); *In re Bd. of Educ. of Valhalla Union Free School Dist. v. Valhalla Teachers Ass'n*, 112 A.D.3d 620 (2<sup>nd</sup> Dep't 2013); *Matter of Enlarged City School Dist. of Middletown v. City of Middletown*, 95 A.D.3d 840 (2<sup>nd</sup> Dep't 2012); *Scro v. Jordan-Elbridge Cent. School Dist.*, 87 A.D.3d 1342 (4<sup>th</sup> Dep't 2011). At the federal level they include: *C. L. v. Scarsdale Union Free School Dist.*, 744 F.3d 826 (2<sup>nd</sup> Cir. 2014); *The Bronx Household of Faith v. Bd. of Educ. of the City of N.Y.*, 750 F.3d 184 (2<sup>nd</sup> Cir. 2014); *Zeno v. Pine Plains Cent. School. Dist.*, 702 F.3d 655 (2<sup>nd</sup> Cir. 2012). NYSSBA also was an *amicus curiae* in *Campaign for Fiscal Equity v. State of New York (CFE)*, 8 N.Y.3d (2006) and 100 N.Y.2d 893 (2002), which set the legal background for the case herein, and is currently involved in the ongoing *New Yorkers for Students' Educational Rights v. State of New York*, 143 A.D.3d 101 (1<sup>st</sup> Dep't 2016) litigation which seeks enforcement of the State's agreed upon response to the CFE litigation.

The Council is a professional association located at 7 Elk Street, Albany, New York 12207. Its membership comprises approximately 97% of school superintendents in New York State, as well as BOCES superintendents, superintendents of special act school districts and other

school district central office administrators. Pursuant to New York State Education Law §§ 1711(2)(a), 2508(1) and 2566(1), superintendents of schools are the chief executive officers of school districts. In this capacity, they are responsible for enforcing all provisions of law and all rules and regulations relating to the management of schools including educational, social, personnel and budgeting issues, under the direction of the board of education. Superintendents also have the right to speak on all matters which come before a board of education.

One aspect of the Council's mission is to advocate on behalf of the state's school superintendents, develop and promote policy on matters relating to elementary and secondary education, school finance, school leadership and superintendents' role as chief executive officers of school districts. The Council has over a century of service to New York State school superintendents.

The Council has appeared as *amicus curiae* in proceedings involving constitutional and statutory issues affecting the administration, financing and operations of public schools. Most relevant to the matter presently before this court, the Council was an *amicus curiae* in *Campaign for Fiscal Equity v. State of New York*, 100 N.Y.2d 893 (2003), which set the legal background for the case herein. More recently, the Council was an *amicus* in *Matter of the Arbitration between Shenendehowa Cent. School Dist. Bd. of Educ. v. Civil Service Employees Ass'n., Inc.*, 20 N.Y.3d 1026 (2013) and *New York State United Teachers Assn. v. Bd. of Regents of Univ. of State of N.Y.*, Case No. 513191 (3<sup>rd</sup> Dep't 2011, *appeal settled*). Other cases in which the Council has previously appeared as an *amicus* before this court include: *Matter of Bd. of Educ. of the City Sch. Dist. of N.Y. City v. Mills*, 8 A.D.3d 834 (3<sup>rd</sup> Dep't 2004), 300 A.D.2d 981 (3<sup>rd</sup> Dep't 2002) and *Matter of Gersen*, 290 A.D.2d 839 (3<sup>rd</sup> Dep't 2002).

New York State PTA is a statewide organization of nearly 300,000 parents, families, teachers, educators, students and other child advocates in approximately 1,600 local units and councils, and is a branch of the National Parent Teachers Association. It is located at One Wembley Court, Albany, New York 12205.

The overall mission of New York State PTA is to make every child's potential a reality by engaging and empowering families and communities to advocate for all children. The purposes of New York State PTA are: To promote the welfare of children and youth in home, school places of worship, and throughout the community; To raise the standards of home life; To advocate for laws that further the education, physical and mental health, welfare, and safety of children and youth; To promote the collaboration and engagement of families and educators in the education of children and youth; To engage the public in united efforts to secure the physical, mental, emotional, spiritual, and social well-being of all children and youth; and To advocate for fiscal responsibility regarding public tax dollars in public education funding.

The appeal currently before this court presents issues related to alleged deficiencies in the system used by the State to financially support public schools, and the manner in which courts are to adjudicate parental claims that the impact of those deficiencies on the particular school district their children attend deprive the schoolchildren in that district of their state constitutional right to an opportunity for a sound basic education. These issues are of particular interest to the *amici* and their respective members, given the obligation imposed on all school districts across New York to provide educational programs and services that enable students to succeed academically and eventually become productive members of society (see, e.g., §§ 1709(1), (2), 2503(2)).

Accordingly, NYSSBA, the Council, and New York State PTA submit this brief *amici curiae* to invite this court's attention to law and arguments that otherwise might not be brought to its attention by the parties, and thereby be of special assistance to the court.



## STATEMENT OF THE ISSUE

Whether the court below erred in ruling against the Plaintiffs-Appellants and dismissing their complaint?

The *amici curiae* respectfully submit the answer is yes.

## STATEMENT OF THE FACTS

The *amici curiae* will not recite a separate statement of facts, except as hereinafter specifically cited within the text of its brief, but will defer instead to the facts submitted by the Plaintiffs-Appellants.

## INTRODUCTION

At its most basic level, the appeal presently before this court presents a simple question, namely whether the court below properly decided to dismiss the Plaintiffs-Appellants' complaint. This court's answer to that question, however, will have far reaching implications for all schoolchildren throughout New York, and their right to receive a sound basic education guaranteed by the State Constitution.

That right is embedded in the Education Article of this State's Constitution (NY Const. Art. XI § 1), and, on a daily basis, parents trust that school districts across the State will provide the level of programs and services necessary for their children to obtain such an education. The ability of school districts to provide such programs and services, however, is dependent on the availability of resources, including reasonable levels of State funding in support of education. Thus, in *Campaign for Fiscal Equity v. State of New York (CFE)* (86 N.Y.2d 307 (1995); 100 N.Y.2d 893 (2003); 8 N.Y.3d 14 (2006)), the New York Court of Appeals recognized the right of schoolchildren and their parents to challenge New York's system for funding public education when it allegedly violates their constitutional right to receive a sound basic education.

The *amici* respectfully submit, however, that the decision of the court below, and a possible affirmance of that decision by this court, will inevitably deprive schoolchildren and their parents of their ability to maintain such a challenge. It is for that reason that the *amici* submit this brief in support of the schoolchildren involved in the case herein, and on behalf of all schoolchildren throughout the State. The concerns of the *amici* derive directly from the legal conclusions upon which the court below based its decision to dismiss the Plaintiffs-Appellants' complaint, including a determination regarding the relevant standard applicable to the resolution of this type of complaint.

As acknowledged by the court below, the Plaintiffs-Appellants' complaint follows the *CFE* litigation wherein it was successfully alleged that the State's system for funding public education in effect at that time violated the state constitutional rights of schoolchildren in New York City to the opportunity of a sound basic education (100 N.Y.2d at 908-919). Such a finding was based upon a demonstration that there was "a correlation between funding and educational opportunity" meaning a "causal link" between the poor performance of schoolchildren in New York City and the State's system for funding public education (100 N.Y.2d at 919; 83 N.Y.2d at 318).

In response to that finding, the State undertook efforts to adjust its school funding system. The Plaintiffs-Appellants maintain, however, that those adjustments are insufficient to address the educational shortcomings being experienced by the schoolchildren attending the eight small city school districts involved in the litigation herein. Also, that more recent developments discussed in detail in their brief have exacerbated those shortcomings.

Following an extensive trial in which the Plaintiffs-Appellants' submitted evidence to establish the same correlation that resulted in a ruling against the State in *CFE*, the court below then proceeded to determine that, in a post-*CFE* environment, an analysis requiring an examination of a causal link between State funding and poor student performance "is not required." Instead, according to the court below, what is required is an examination of "the actions of the State in the post-*CFE* environment."

For the reasons that follow, and those discussed in the Plaintiffs-Appellants brief, this court should reverse the decision of the court below and rule in favor of the Plaintiffs-Appellants.

## ARGUMENT

### **THE COURT BELOW ERRED IN RULING AGAINST THE PLAINTIFFS-APPELLANTS AND DISMISSING THEIR COMPLAINT.**

As noted by the court below, the complaint initiating the action herein alleges that the schoolchildren attending the eight small city school districts involved in this litigation herein are being deprived of their constitutional right to the opportunity of a sound basic education guaranteed by the Education Article of the New York State Constitution (NY Const. Art. XI § 1). That right is now well recognized and established after more than a decade of litigation that spanned the latter part of the last century and the beginning of this one (see *Campaign for Fiscal Equity v. State of New York (CFE)*, 86 N.Y.2d 307 (1995); 100 N.Y.2d 893 (2003); 8 N.Y.3d 14 (2006)).

The decisions of the New York Court of Appeals during the course of that litigation further established that it is the State that is required to “offer all children the opportunity of a sound basic education” (86 N.Y.2d at 316-17). The State assumed that constitutional obligation when the Education Article was adopted at the 1894 Constitutional convention (100 N.Y.2d at 902, 905; 86 N.Y.2d at 314). Moreover, the nature of that obligation requires “a State-wide system assuring minimal acceptable facilities and services in contrast to the unsystematized delivery of instruction...in existence within the State” back then (86 N.Y.2d at 314 [citations omitted]). As a result, the New York Court of Appeals determined that, to establish a violation of the constitutional right to the opportunity for a sound basic education, a plaintiff must prove the existence of “a correlation between funding and educational opportunity” meaning a “causal link” between the poor performance of schoolchildren and the state’s system of funding education (100 N.Y.2d at 919; 86 N.Y.2d at 318).

**A. The court below erred in concluding that the *CFE* causal link analysis is not required in a post-*CFE* environment.**

In the decision at issue herein, the court below acknowledged that the performance of schoolchildren in the school districts specifically affected by the present litigation “is undeniably inadequate.” The court, however, did not determine whether that performance deficiency was linked to the State’s system for funding public education and the adjustments to that system effectuated in response to the *CFE* decisions. Instead, the court below concluded that such an examination is not required in a post-*CFE* environment, and placed the focus, instead, on the reasonableness of the State’s actions since *CFE*.

The *amici* respectfully submit that the court below erred in failing to apply the *CFE* “causal link” analysis and in relying, instead, on an examination of the reasonableness of the State’s actions at the core of the challenge herein to support its ruling in favor of the State. In response to *CFE*, the State chose to address the shortcomings in its system for funding public education that caused the performance deficiencies of schoolchildren in New York City through the adoption of a new system for the distribution of such funding applicable on a statewide basis known as the foundation aid formula, and a commitment to increase the levels of State support for education.

However, as noted by the court below, the foundation aid formula derived from an analysis of per pupil spending in school districts that meet certain student achievement criteria. As such, it does not address the differentiated needs of schoolchildren in the various regions of New York State, and thus leaves the door open for additional challenges concerning State compliance with the constitutional mandate embedded in the Education Article as discussed more fully above.

It is because of such reasons, and others already discussed above, that resolution of issues pertaining to the State's compliance with its constitutional obligation to offer all schoolchildren the opportunity for a sound basic education requires an assessment of "the adequacy of education financing" for the public schools where the performance of schoolchildren is poor (see 100 N.Y.2d 893 at 928). Upon a finding establishing a causal link between the poor performance at issue and the State's system for funding public education, adequacy would then depend on whether the State's funding levels are calibrated to the needs of the schoolchildren involved (see 100 N.Y.2d 893 at 929-30). Thus, application of the *CFE* causal link standard was essential to the resolution of the issues herein, and the court below erred in concluding that it was not required.

That "educators, administrators, State actors and other employees of the school districts" share responsibility to "improve the results for their students" does not excuse application of the causal link analysis. Indeed, when commenting on a similar argument related to the apportionment of responsibility in the *CFE* case, the New York Court of Appeals indicated that "...there may be many 'causal' links to a single outcome, and there is no reason to...search for a single cause of the failure of [school district] schools" (100 N.Y.2d 893 at 920 [citation omitted]).

**B. The court below erred in shifting to an analysis of the reasonableness of the State's response to the *CFE* decisions and subsequent State actions related thereto, after determining that application of the *CFE* causal link standard was not required in a post-*CFE* environment.**

The shift in the court's analysis to the reasonableness of the State actions at issue herein could be explained in light of the recognition by the court below that the judicial branch of government is to avoid intruding into matters left to the discretion of the legislative and

executive branches of government such as education financing. The *amici* respectfully submit, however, that the case herein does not present such a risk.

The case herein involves a matter of constitutional dimension and efforts to enforce student rights secured by the Education Article of the New York State Constitution. As in *CFE*, the court below was merely asked to determine whether the State's system for financing public education revised in response to the *CFE* decision, and subsequent State actions related to that response, violate the constitutional right of schoolchildren attending the school districts involved in the litigation herein to receive a sound basic education. The *amici* respectfully submit that a judicial answer to that basic question requires no intrusion into the domain of the other branches of government.

Furthermore, the State has no authority or ability to compromise a constitutionally protected right (see generally *Klostermann v. Cuomo*, 61 N.Y.2d 525 (1984)). As stated by the New York Court of Appeals, "it is the province of the Judicial branch to define, and *safeguard*, rights provided by the New York State Constitution, and order redress for violation of them" (8 N.Y.3d at 28; 100 N.Y.2d at 925).

In addition, the definition of a sound basic education cannot be fixed with pinpointed precision. What is required is that it provide "the contours of the requirement against which the facts of a case may then be measured" (100 N.Y.2d at 931). Those include "the basic literacy, calculating, and verbal skills necessary to enable children to eventually function productively as civic participants" (8 N.Y.3d at 20-21) in a contemporary society (100 N.Y.2d at 905). Just as the contours of a sound basic education must evolve to meet the needs of "rising generations" (see 100 N.Y.2d at 905), the *amici* respectfully submit that so must the State's system of funding public education adjust to the evolving needs of schoolchildren.



Accordingly, the reasonableness of actions intended to ensure compliance with the State's constitutional obligation under the Education Article must be measured against the actual educational needs of schoolchildren relevant to the acquisition of a sound basic education (see 100 N.Y.2d at 929). The New York Court of Appeals must have recognized as much when it directed that any new State scheme for funding public education include a "system of accountability to measure whether the reforms actually provide the opportunity for a sound basic education" (100 N.Y.2d at 930). The State has not instituted such an accountability system. The court below did not measure the reasonableness of the State's actions at issue herein against the evidence submitted at trial in relation to the actual educational needs of the schoolchildren involved.

Essentially, the decision of the court below turns back the clock to the pre-CFE era when State actions related to the funding of public education could be deemed reasonable under varying conditions, and still be out of compliance with the State's constitutional obligation under the Education Article. It was not until the *CFE* litigation that the focus was squarely placed on State compliance with the Education Article mandate. After *CFE*, the reasonableness of State actions related to the financing of public education depend on whether those actions comply with the State's constitutional obligation to offer all students the opportunity for a sound basic education (86 N.Y.2d at 316-17).

For the foregoing reasons, the *amici* respectfully submit that the court below erred when it ruled against the Plaintiffs-Appellants and dismissed their complaint based on the seeming reasonableness of the State's actions since the *CFE* decisions, whether or not those actions actually comply with the State's constitutional obligation under the Education Article. An affirmance by this court of the decision of the court below would be contrary to the well-

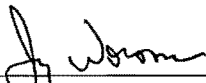
established rulings of the New York Court of Appeals in *CFE*, and effectually deprive the schoolchildren on whose behalf this litigation was commenced, and ultimately others throughout the State, of their constitutional right to the opportunity for a sound basic education.

**CONCLUSION**

For all the foregoing reasons, this court should reverse the decision of the court below, rule in favor of the Plaintiffs-Appellants, and grant any such further relief as this court may deem appropriate.

Dated: March 8, 2017  
Latham, New York

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