IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION THREE

CAMPAIGN FOR QUALITY EDUCATION, et al., *Plaintiffs and Appellants* **vs.** **STATE OF CALIFORNIA, et al.,** *Defendants and Respondents.*	A134423 Alameda Superior Court Case No. RG 10524770
ROBLES-WONG, et al., *Plaintiffs and Appellants* **vs.** **STATE OF CALIFORNIA, et al.,** *Defendants and Respondents.* **CALIFORNIA TEACHERS ASSOCIATION,** *Intervenor and Appellant.*	A134424 Alameda Superior Court Case No. RG 10515768

Appeals from the Superior Court of California, County of Alameda
The Honorable Steven A. Brick

APPLICATION TO FILE BRIEF OF AMICI CURIAE AND BRIEF OF AMICI CURIAE IN SUPPORT OF PLAINTIFFS-APPELLANTS BY EDUCATION LAW CENTER AND CAMPAIGN FOR EDUCATIONAL EQUITY, TEACHER'S COLLEGE, COLUMBIA UNIVERSITY

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APPLICATION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE

Pursuant to California Rule 8.200(c), proposed amici,[1] the Education Law Center ("ELC") and the Campaign for Educational Equity, Teacher's College, Columbia University ("CEE") hereby respectfully apply to this Court for leave to file the accompanying Brief of Amici Curiae in support of Plaintiffs-Appellants in the above-captioned case.

ELC is a non-profit organization in New Jersey established in 1973 to advocate on behalf of public school children for access to an equal and adequate educational opportunity under state and federal laws through policy initiatives, research, public education, and legal action. ELC represented the plaintiff schoolchildren in *Abbott v. Burke* (*Abbott II*) (N.J. 1990) 575 A.2d 359, and continues to advocate on their behalf to ensure effective implementation of the *Abbott* remedies, which have "enabled children in Abbott districts to show measurable educational improvement." (*Abbott v. Burke* (*Abbott V*) (N.J. 2008) 960 A.2d 360, 363.) Because of its expertise in education law and policy, ELC established Education Justice at Education Law Center ("Education Justice"), a national program to advance children's opportunities to learn. Education Justice provides advocates seeking better educational opportunities in states across the nation with analyses and assistance on: relevant litigation; high quality preschool and other proven educational programs; resource gaps; education cost studies; and policies

[1] No party or counsel for a party in the pending appeal authored the proposed amicus brief in whole or in part, or made a monetary contribution intended to fund the preparation or submission of the brief. No person made a monetary contribution intended to fund the preparation or submission of the proposed brief, other than the proposed amici curiae, their members, or their counsel. (*See* Cal. Rules of Court, rule 8.200(c)(3).)

that help states and school districts build the know-how to narrow and close achievement gaps. Education Justice has participated as amicus curiae in state educational opportunity cases in Colorado, Connecticut, Indiana, Maryland and South Carolina.

CEE is a nonprofit research and policy center at Teachers College, Columbia University that supports the right of all children to a meaningful educational opportunity. CEE promotes research by scholars at Columbia University and elsewhere that examines the relationship between specific educational resources and educational opportunities and student success, particularly for children from disadvantaged backgrounds. CEE publishes research papers and books and sponsors symposia, workshops and conferences on issues related to educational equity. Its research and publications focus on educational equity issues at the national and international levels.

ELC and CEE request leave to submit this brief as amici curiae to provide the Court with a national perspective on how courts throughout the country have (1) interpreted their states' Education Clauses to find a qualitative right to an education that is consistent with their states' constitutional text; (2) discerned and applied judicially manageable standards to enforce their states' constitutional mandates for a qualitative right to an education; and (3) recognized that the separation of powers doctrine compels, rather than restrains, judicial enforcement of a qualitative right to an education under their state Constitutions.

Amici believe their experience in educational opportunity issues will make this brief of service to the Court.

Respectfully submitted,

Dated: January 16, 2013

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BRIEF OF AMICI CURIAE

PRELIMINARY STATEMENT

The California Supreme Court has long recognized that the Education Article of the California Constitution confers on its school children a fundamental right to an education that will prepare them to participate in the social, cultural and political activities of our society. Under the current education funding system, California children are being denied their fundamental constitutional right because they are not receiving an adequate education. This Court is now presented with the opportunity to remedy this constitutional violation by affirmatively defining, consistent with California Supreme Court precedent, the contours of this fundamental right to an education. Experience in other states with similar constitutional language shows that this Court may and should find that Article IX embodies a qualitative right to an education.

Courts in at least 22 states have already addressed this issue and found that Education Clauses in their states' Constitutions -- some with language similar to California's -- confer qualitative, judicially enforceable rights to an education. This precedent is not only consistent with the operative constitutional texts but is also wholly supported by the founding principles of the American public education system that envisioned a qualitative right to an education for all children. This vision was not conveyed in one specific way -- rather, it is embodied in a variety of language used in Education Clauses throughout the country. Moreover, these courts have not hesitated in their judicial role as interpreters of their state Constitutions to discern and apply judicially manageable standards, based on constitutional texts and legislative interpretations of

constitutional obligations as articulated in statutory content-based academic standards, to ensure their children are educated consistent with state constitutional standards. ELC and CEE urge this Court to do the same.

Moreover, contrary to the State's argument, the separation of powers doctrine compels this Court to adjudicate plaintiffs' claims, rather than prevents it from acting. It is the sole province of the judiciary to interpret the California Constitution and determine whether California's children are being deprived of their state constitutional rights. To refrain from doing so, as the State requests, would constitute an abdication of the Court's role under the California Constitution.

Accordingly, this Court can and should find that Article IX guarantees California's children, at the very least, a qualitative right to an education and remand plaintiffs' case to hear evidence as to whether the State's current education funding system comports with this mandate.

STATEMENT OF THE CASE

ELC and CEE adopt the statement of the case presented in the Corrected Appellants' Opening Brief.

ARGUMENT

POINT I

PRECEDENT FROM COURTS IN SISTER STATES SUPPORT THE FINDING OF A QUALITATIVE RIGHT TO AN EDUCATION UNDER ARTICLE IX.

California is not the first state to face a challenge to the adequacy of its school funding. Over the past 35 years high courts in many states across the nation have been asked to adjudicate whether their school funding systems violate the Education Clauses of their respective state Constitutions. As a result, at least 22 high courts have found that their Education Clauses confer a qualitative right to an education, and most of these courts have remanded the cases for a trial on the merits to test whether their current education system comports with the constitutionally recognized qualitative right.[2] In support of plaintiffs' argument that Article IX of the California Constitution contains a qualitative standard (Corrected Appellants' Opening Brief ("AOB") 39–43), ELC and

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[2] *Conn. Coal. for Justice in Educ. Funding v. Rell* (*CCJEF*) (Conn. 2010) 990 A.2d 206; *Davis v. State* (S.D. 2011) 804 N.W.2d 618; *Lobato v. State* (Colo. 2009) 218 P.3d 358; *Columbia Falls Elementary Sch. Dist. No. 6 v. State* (Mont. 2005) 109 P.3d 257; *Montoy v. State* (Kan. 2005) 102 P.3d 1160; *Edgewood Indep. Sch. Dist. v. Kirby* (Tex. 1989) 777 S.W.2d 391; *Tucker v. Lake View Sch. Dist. No. 25* (*Lake View II*) (Ark. 1996) 917 S.W.2d 530; *Campaign for Fiscal Equity, Inc. v. State* (*CFE III*) (N.Y. 2003) 801 N.E.2d 326; *Vincent v. Voight* (Wis. 2000) 614 N.W.2d 388; *Abbeville Cnty. Sch. Dist. v. State* (S.C. 1999) 515 S.E.2d 535; *Roosevelt Elementary Sch. Dist. No. 66 v. Bishop* (Ariz. 1994) 877 P.2d 806; *Claremont Sch. Dist. v. Governor* (N.H. 1997) 703 A.2d 1353; *Leandro v. State* (N.C. 1997) 488 S.E.2d 249; *DeRolph v. State* (Ohio 1997) 677 N.E.2d 733; *Brigham v. State* (Vt. 1997) 692 A.2d 384; *Campbell Cnty. Sch. Dist. v. State* (*Campbell Cnty. Sch. Dist. I*) (Wyo. 1995) 907 P.2d 1238; *McDuffy v. Sec'y of Exec. Office of Educ.* (Mass. 1993) 615 N.E.2d 516; *Idaho Schs. for Equal Educ. Opportunity v. Evans* (Idaho 1993) 850 P.2d 724; *Abbott II*, *supra*, 575 A.2d 359; *Rose v. Council for Better Educ., Inc.* (Ky. 1989) 790 S.W.2d 186; *Pauley v. Kelly* (W.Va. 1979) 255 S.E.2d 859; *Seattle Sch. Dist. No. 1 v. State* (Wash. 1978) 585 P.2d 71

CEE urge the Court to seek guidance from its sister states that have held that their respective Constitutions require the State to provide students with an education that meets a qualitative standard.[3] In its brief, the State attempts to parry this point by claiming that the great majority of these out-of-state decisions construed "distinctly different constitutional provisions that included mandatory qualitative language or explicit guarantees regarding education not found in our state constitution." (Respondents' Brief ("RB") at p. 25.) The State's position, however, reflects a misunderstanding of what the high courts in these states have actually held in these cases. Instead, as explained below, the founding principles of public education in America and the collective national education adequacy jurisprudence reflect a common understanding that Education Clauses, like Article IX, contain a qualitative mandate, notwithstanding minor differences in the language used by its original drafters.

A. The Founders Of The American Public Education System Envisioned A Substantive Education For All Children And This Vision Is Embodied In Various Language Used In States' Education Clauses.

The Education Clauses of almost every state Constitution contain language that requires the state to provide children with some substantive level of basic education. The specific wording used to convey this concept generally includes calls for establishing a "system of free common schools,"[4] a "system of free public schools,"[5] "[k]nowledge

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[3] California courts have long looked to other decisions from courts in sister states for insight into issues they are considering. (*See Albers v. L.A. Cnty.* (1965) 62 Cal.2d 250, 269; *Savett v. Davis* (1994) 29 Cal.App.4th Supp. 13, 16.)

[4] *See, e.g.*, N.Y. Const. art. XI, § 1.

[5] *See, e.g.*, S.C. Const. art. XI, § 3.

and learning, generally diffused,"[6] or a "thorough and efficient" education.[7] Most of these provisions were incorporated into the state Constitutions as part of the "common school" movement of the mid-19th century, which created statewide systems for public education and attempted to inculcate democratic values by bringing together under one roof students from all classes and all ethnic backgrounds.[8] The "thorough and efficient" language was added by some states that ratified their Education Clauses after the Civil War, adopting language from the "Hoar bill," a proposed but rejected Congressional bill that would have stimulated the states to provide educational opportunities for the freedmen.[9] Some of the Education Clauses, primarily in the New England states, date back to 18th century revolutionary ideals of creating a new "republican" citizenry.

It is clear that the drafters of these constitutional provisions expected their words to have strong substantive content. Benjamin Franklin epitomized the educational ideals of the nation's founders when he argued that a new republican curriculum must develop in students critical analytic skills in reading, writing and oral rhetoric; "he urged that students be required to read newspapers and journals of opinion on a regular basis

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[6] *See, e.g.*, N.H. Const. pt. 2, art. 83. *See also* Mass. Const., pt. 2, ch. V, § II ("[w]isdom, and knowledge, as well as virtue, diffused generally").

[7] N.J. Const. art. 8, § 4, ¶ 1. *Cf.* Idaho Const. art. IX, § 1 (a "general, uniform and thorough system" of education); Ky. Const. § 183 (an "efficient system of common schools throughout the state").

[8] *See generally* Cremin, American Education: The National Experience, 1783–1876 (1980); Kaestle, Pillars of the Republic: Common Schools and American Society, 1780–1860 (1983).

[9] Lee, The Struggle for Federal Aid, First Phase: A History of the Attempts to Obtain Federal Aid for the Common Schools, 1870–1890 (1949) p. 42.

and that they be incited to debate and argue over . . . the . . . major controversies of the day."[10] Horace Mann, the founder of the common school movement, stated this ideal in even stronger language:

> Education must be universal . . . With us, the qualification of voters is as important as the qualification of governors, and even comes first, in the natural order . . . The theory of our government is, -- not that all men, however, unfit shall be voters -- but that every man, by the power of reason and the sense of duty, shall become fit to be a voter. Education must bring the practice as nearly as possible to the theory. As the children are now, so will the sovereigns soon be.[11]

Although the various state Constitutions use a variety of different language to connote this concept of a substantive basic education, there is broad consensus among the state supreme courts that have applied these concepts as to its core meaning. Virtually all of the courts that have reached the merits in these cases[12] have agreed that:

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[10] Prangle & Prangle, *What the American Founders Have to Teach Us About Schooling for Democratic Citizenship*, Rediscovering the Democratic Purposes of Education (McDonnell et al. eds., 2000) p. 30. *See also Hartzell v. Connell* (1984) 35 Cal.3d 899, 906–07 (Regarding Virginia, "Thomas Jefferson wrote . . . 'I think by far the most important bill in our whole code is that for the diffusion of knowledge among the people. No other sure foundation can be devised for the preservation of freedom, and happiness.'").

[11] Mann, Lectures on Education (1855) p. vii.

[12] "Almost all of the defendant victories at the liability stage of sound basic education litigations since 1989 . . . occurred only where the state's highest courts ruled that the sound basic education issue was not 'justiciable,' meaning that they did not consider it proper for the courts to even consider these questions consistent with separation of powers precepts. Thus, they dismissed these cases at the outset, before any trial was held and any evidence of inadequacy could even be considered." (Rebell, Courts and Kids: Pursuing Educational Equity Through the State Courts (The University of Chicago Press, 2009) p. 22.) The California Supreme Court, of course, made clear in *Serrano* that the

(1) the constitutional language in their state Education Clauses has substantive, qualitative content, whatever the historic language used by its original drafters, and (2) all of these clauses require the state to provide all children with the opportunity to acquire the skills needed to function capably as a citizen and to compete effectively in the global labor market. (*See, e.g.*, *Campbell Cnty. Sch. Dist. I*, *supra*, 907 P.2d at p. 1259 [defining the core constitutional requirement in terms of providing children "with a uniform opportunity to become equipped for their future roles as citizens, participants in the political system, and competitors both economically and intellectually"]; *Vincent v. Voight* (Wis. 2000) 614 N.W.2d 388, 396 ["a sound basic education is one that will equip students for their roles as citizens and enable them to succeed economically and personally"]; *Claremont*, *supra*, 703 A.2d at p. 1359 [defining constitutional duty in terms of preparing "'citizens for their role as participants and as potential competitors in today's marketplace of ideas'"], citation omitted; *Campaign for Fiscal Equity, Inc. v. State* (*CFE I*) (N.Y. 1995) 655 N.E.2d 661, 666 [defining "sound basic education" in terms of preparing students to "function productively as civic participants capable of voting and serving on a jury"]; *Edgewood Indep. Sch. Dist. v. Kirby* (Tex. 1989) 777 S.W.2d 391, 395–96 [citing intent of framers of Education Clause to diffuse knowledge "for the preservation of democracy . . . and for the growth of the economy"], citation omitted; *Robinson v. Cahill* (*Robinson I*) (N.J. 1973) 303 A.2d 273, 295 [defining the

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right to education is justiciable in this state. It also agreed that education is "crucial to . . . the functioning of democracy" and to "an individual's opportunity to compete successfully in the economic marketplace." (*Serrano v. Priest* (*Serrano I*) (1971) 5 Cal.3d 584, 607–09.)

constitutional requirement as "that educational opportunity which is needed in the contemporary setting to equip a child for his role as a citizen and as a competitor in the labor market"].)

B. State High Courts Have Found That A Qualitative Mandate Is Embodied In Education Clauses Using Language Similar To That Used In Article IX.

The State attempts to dismiss 15 of the 22 decisions cited by plaintiffs by arguing that the Education Clauses at issue had explicit constitutional language such as "thorough and efficient" that is not found in the California Constitution. (RB at p. 24–26.) This attempt to distinguish those cases ignores the actual reasoning on which the decisions were based, and that the other state courts tend to see these various phrases as all relating to the basic general aim of providing children the skills needed for capable citizenship and productive employment.[13] (*See, e.g.*, *Rose*, *supra*, 790 S.W.2d at pp. 212–13 [defining term "efficient" as an aspect of "a system of common schools"]; *Neeley v. W. Orange-Cove Consol. Indep. Sch. Dist.* (Tex. 2005) 176 S.W.3d 746, 776–79 [defining the reference to "general diffusion of knowledge" in the Texas Education Clause as being harmonious and consistent with the references to "efficiency" and "suitability"].) Moreover, states with the general "diffusion" language have freely adopted the precedents and substantive definitions from states with "stronger" "thorough and efficient" language. (*See, e.g.*, *McDuffy*, *supra*, 615 N.E.2d at p. 554 [adopting the

[13] The State's argument that Article IX does not embody a qualitative standard because Article IX's framers rejected the "thorough and efficient" language (RB at p. 12) is thus unpersuasive, as courts have found a qualitative standard in education clauses using different language, including California's "general diffusion of knowledge" and "system of common schools" language.

substantive educational standard for the constitutional right to education in *Rose* as the Massachusetts constitutional standard].)[14]

In short, the distinction that the State seeks to make between allegedly "strong" constitutional language such as "thorough and efficient" and allegedly "weak" language such as the "common schools" or "diffusion" terms in California's Article IX, is not supported by the cases the State cites. Many of the state courts that have interpreted constitutional clauses with the purportedly "weak" constitutional language have indisputably found significant substantive, qualitative content in them.

For example, unlike Article IX, New York's Constitution contains no qualifying language and simply provides that "[t]he legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated." (N.Y. Const. art XI, § 1.) The Court of Appeals, the state's highest court, first held that the term "educated" in this clause means a "sound basic education." (*Bd. of Educ., Levittown Union Free Sch. Dist. v. Nyquist* (N.Y. 1982) 439 N.E.2d 359, 369.) Based upon a trial record that considered extensive evidence of what constitutes a "sound basic education," the Court later held that a sound basic education means a "meaningful high school education, one that prepares them to function productively as civic participants." (*CFE III*, *supra*, 801 N.E.2d at p. 332.) It then found

[14] Ironically, the State is inconsistent in its citation of precedents regarding other state constitutions, by including in its list of 15 states that allegedly had "mandatory qualitative language or explicit guarantees regarding education" (RB at p. 25) states such as New York, whose constitution contains only the basic "common schools" language similar to Article IX. (N.Y. Const. art XI, § 1)

that, because of resource deficiencies in New York City public schools, children were being denied their substantive constitutional right. (*Id.* at p. 340.)

Additionally, the South Carolina Supreme Court, in interpreting the "free public schools" clause in its state Constitution, decisively rejected the state's argument that this language lacked a qualitative component. In ruling that the South Carolina education provision must be interpreted to have substantive content, it also summarized similar holdings of a number of other state supreme courts:

> We hold today that the South Carolina Constitution's education clause requires the General Assembly to provide the opportunity for each child to receive a minimally adequate education. *Compare Opinion of the Justices*, 624 So.2d 107 (Ala.1993) (holding qualitative standard created by clause "The Legislature shall establish, organize, and maintain a liberal system of public schools throughout the state for the benefit of the children thereof...."); *R.E.F.I.T. v. Cuomo*, 86 N.Y.2d 279, 631 N.Y.S.2d 551, 655 N.E.2d 647 (1995) ("The legislature shall provide for the maintenance and support of a system of free common schools" requires that each student receive a sound basic education); *Fair School Fin. Council of Oklahoma v. State*, 746 P.2d 1135 (Ok.1987) (constitutional provisions requiring the " establishment and maintenance of a system of free public schools" means a basic adequate education); *Tennessee Small School System v. McWherter*, 851 S.W.2d 139 (1993) (holding constitutional clause "The General Assembly shall provide for the maintenance, support and eligibility standards of a system of free public schools" embraces a qualitative component); *see also Gould v. Orr*, 244 Neb. 163, 506 N.W.2d 349 (1993) (no violation of clause "The legislature shall provide for the free instruction in the common schools of this state" alleged where no claim of "inadequate schooling"). . . .

(*Abbeville*, *supra*, 515 S.E.2d at p. 540; *see also CCJEF*, *supra*, 990 A.2d at pp. 244–50.)

The Massachusetts high court's interpretation of its Education Clause is also contrary to the State's argument that courts have not found qualitative mandates arising from -- as the State characterizes it -- "weak" constitutional language. The Massachusetts education provision identifies the purpose of public education as "[w]isdom, and knowledge, as well as virtue, diffused generally among the people." (Mass. Const., pt. 2, ch. V, § II.) Addressing the contemporary meaning of the language, the Massachusetts Supreme Judicial Court held that the state had a mandatory obligation, rather than just a hortatory aspiration, to provide a substantive public education to all children of the state. (*McDuffy*, *supra*, 615 N.E.2d at pp. 524–25, 527.) The court found that education was necessary for an educated and participative citizenry, and was, in fact, "essential to the preservation of the entire constitutional plan." (*Id.* at p. 524.) To reach the level of education required by the Constitution, the court held that children in Massachusetts were entitled to an education that would provide them with the opportunity to develop the seven competencies, described in Point II below, articulated by the Kentucky Supreme Court in interpreting its "efficient" clause in *Rose*, *supra*, 790 S.W.2d at pp. 212–13. (*Id.* at p. 554.)

Like Massachusetts, New Hampshire's Education Article also speaks in terms of "[k]nowledge and learning, generally diffused." (N.H. Const. pt. 2, art. 83.) The New Hampshire Supreme Court found that this education provision embodies a substantive egalitarian command rather than a mere aspiration. (*Claremont*, *supra*, 703 A.2d at pp. 1357–58.) The Court held that the state's duty to educate its children

includes a qualitative standard that "extends beyond mere reading, writing and arithmetic. It also includes broad educational opportunity needed in today's society to prepare citizens for their role as participants and as potential competitors in today's marketplace of ideas." (*Id.* at p. 1359, citation and internal quotation marks omitted.) The Court further held that:

> A constitutionally adequate public education is not a static concept removed from the demands of an evolving world. . . . Mere competence in the basics-reading, writing, and arithmetic-is insufficient in the waning days of the twentieth century to insure that this State's public school students are fully integrated into the world around them. A broad exposure to the social, economic, scientific, technological, and political realities of today's society is essential for our students to compete, contribute, and flourish in the twenty-first century.

(*Ibid.*)

Finally, courts have found a qualitative standard in state Education Clauses even in the absence of the similar qualifying language discussed above. These courts have not only looked to the operative text of the Education Clauses at issue but also to their state's education jurisprudence, as well as decisions from sister states, in rendering their decisions that their respective Constitutions embody a qualitative right to an education.

Most recently, the Connecticut Supreme Court squarely addressed the issue of whether Connecticut's Education Clause -- whose language contains no qualifier and is perhaps the least specific of the 50 states -- guaranteed children "the right to a

particular minimum quality of education, namely, suitable educational opportunities."[15] (*CCJEF*, *supra*, 990 A.2d at p. 211.) Notably, the court held that even without such qualifying language, Connecticut's Education Clause entitles children "to an education suitable to give them the opportunity to be responsible citizens able to participate fully in democratic institutions, such as jury service and voting [and] prepared to progress to institutions of higher education, or to attain productive employment and otherwise contribute to the state's economy." (*Id.* at p. 253, fn. omitted.) This holding was informed by several factors, including the Connecticut Supreme Court's previous declaration -- similar to that of the California Supreme Court in *Serrano I* -- that education is a "fundamental right" under the state's Constitution. (*Id.* at pp. 233–40.)

Perhaps the factor most influential to the court, however, was its review of decisions by sister states in education adequacy cases -- a review that the Court described as one of "paramount importance." (*CCJEF*, *supra*, 990 A.2d at pp. 244–50.) In addition to the New York, New Hampshire and South Carolina cases, discussed above, the *CCJEF* Court cited to decisions by the high courts in Tennessee and Washington, all of which found that a qualitative right arose out of broad, non-specific constitutional language.[16] (*Tenn. Small Sch. Sys. v. McWherter* (Tenn. 1993) 851 S.W.2d 139, 150–51

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[15] The Connecticut Education Clause states: "There shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation." (Conn. Const. art. 8, § 1.)

[16] These Education Clauses provide as follows: (Tennessee) "The State of Tennessee recognizes the inherent value of education and encourages its support. The General Assembly shall provide for the maintenance, support and eligibility standards of a system of free public schools. The General Assembly may establish and support such postsecondary educational institutions, including public institutions of higher learning, as

[holding that Tennessee's Education Clause requires the legislature "to maintain and support a system of free public schools that provides, at least, the opportunity to acquire general knowledge, develop the powers of reasoning and judgment, and generally prepare students intellectually for a mature life"]; *Seattle Sch. Dist. No. 1*, *supra*, 585 P.2d at p. 95 [finding, in part, that Washington's Education Clause "goes beyond mere reading, writing and arithmetic. It also embraces broad educational opportunities needed in the contemporary setting to equip our children for their role as citizens and as potential competitors in today's market as well as in the marketplace of ideas . . ."], citations omitted.)

California's Article IX contains the "general diffusion of knowledge" language, similar to that of Massachusetts and New Hampshire, as well as the "system of common schools" language used in the New York Constitution. The use of both of these clauses in the California Constitution, each of which was in common use in the 19th century and has been interpreted by a number of courts to confer a qualitative education right, signifies a strong commitment to a qualitative right to an education in California. Moreover, the California Supreme Court has already found that Article IX's use of both phrases was historically significant in that it reflects both the educational aims of the 18th century founding fathers and the "common school" language of the 19th century founders of the public school systems. (*Hartzel*, *supra*, 35 Cal.3d at pp. 906–11.) In fact, in

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it determines." (Tenn. Const. art. 11, § 12.) (Washington) "It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex." (Wash. Const. art. 9, § 1.)

Hartzel, the Court quoted repeated statements from the Constitution's drafters concerning the importance of a strong public education system in ruling that extra-curricular activities are a fundamental component of civic skills instruction -- making the California Supreme Court the only court that has even reached this conclusion. (*Id.* at p. 909.) Additionally, California has already found that Article IX grants California children a "fundamental right" to an education that prepares them to "participate in the social, cultural and political activity of our society" (*Serrano I*, *supra*, 5 Cal.3d at pp. 608–09, citation and internal quotation marks omitted) -- a factor that this Court should find significant, as its colleagues in Connecticut did when interpreting constitutional text without any qualifying language.

Accordingly, this Court may properly, and should, find that Article IX's "general diffusion of knowledge" and "system of common schools" language compels a finding of a qualitative right to an education in California.

POINT II

COURTS ARE INSTITUTIONALLY SUITED TO ENFORCE THE CONSTITUTIONAL QUALITATIVE RIGHT TO AN EDUCATION UNDER JUDICALLY MANAGEABLE STANDARDS.

ELC and CEE also encourage the Court to consult jurisprudence from its sister states for reference on how other state courts have crafted judicially manageable standards for use in determining whether their constitutional mandates were being met. This Court can look to such decisions for guidance as to how courts can use

constitutional texts and/or state-promulgated content-based academic standards, to craft judicially manageable standards and remedies.

A. Constitutional Text-Based Standards.

Courts in many of the 22 states which have found a qualitative component in state Education Clauses have also found that neutral, manageable standards on this important constitutional issue could be discerned from the constitutional text.[17] Specifically, those courts explicated judicially manageable standards by interpreting the Education Clause of their respective state's Constitution, and then provided guidance to the remand court for its determination of whether the constitutional standard is being met. A few of the particularly relevant cases are discussed below.

For example, in *CFE I*, after finding that the "system of common schools" language in New York's Education Article mandated a sound basic education, the court discerned standards for the remand court to apply to ensure that mandate was being met. (655 N.E.2d at p. 666–67.)

Specifically, the court found that:

> [A sound basic] education should consist of 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. If the physical facilities and pedagogical services and resources made available under the present system are adequate to provide children with the opportunity to obtain these essential skills, the State will have satisfied its constitutional obligation.
>
> [¶] . . . [¶]

[17] See footnote two, *supra*

> The State must assure that some essentials are provided. Children are entitled to minimally adequate physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn. Children should have access to minimally adequate instrumentalities of learning such as desks, chairs, pencils, and reasonably current textbooks. Children are also entitled to minimally adequate teaching of reasonably up-to-date basic curricula such as reading, writing, mathematics, science, and social studies, by sufficient personnel adequately trained to teach those subject areas.

(*Id.* at p. 666, citations omitted. *See also CCJEF*, *supra*, 990 A.2d at p. 316 [adopting these components as requisites to a constitutionally adequate education in Connecticut].)

Following the standards that were set forth by the court, the *CFE I* parties presented evidence to the trial court on: teaching quality, facilities, and other "inputs," such as the availability of textbooks and computers; student "outcomes," such as test scores and graduation rates; and the state system of education finance. (*Campaign for Fiscal Equity, Inc. v. State* (*CFE II*) (N.Y. Sup. Ct. 2001) 719 N.Y.S.2d 475.) The trial court ruled in plaintiffs' favor, and the decision was affirmed on appeal. (*CFE III*, *supra*, 801 N.E.2d 326.)

Similarly, in a seminal and often followed case, the Supreme Court of Kentucky discerned judicially manageable standards from the Education Clause in its state's Constitution. (*Rose*, *supra*, 790 S.W.2d at pp. 212–13.) After first holding that the Education Clause sets forth a constitutional obligation to provide a qualitative right to an education, the *Rose* court found that the Constitution required the legislature to carefully supervise the system to ensure "that there is no waste, no duplication, no

mismanagement, at any level." (*Id.* at p. 211.) The court went on to explain that "[t]he system of common schools must be adequately funded to achieve its goals" but that it was not instructing the General Assembly to enact specific legislation or raise taxes. (*Id.* at pp. 211–12.) Rather, the court noted that it is the General Assembly's "decision how best to achieve efficiency" and that the court's role was only to "decide the nature of the constitutional mandate" and the "intent of the framers." (*Id.* at p. 212.)

The court then promulgated manageable standards of its own. Specifically, the court determined that an efficient system of education as required by Kentucky's Constitution should provide each and every child with the following seven capacities:

> (i) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization; (ii) sufficient knowledge of economic, social, and political systems to enable the student to make informed choices; (iii) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation; (iv) sufficient self-knowledge and knowledge of his or her mental and physical wellness; (v) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage; (vi) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and (vii) sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market.

(*Id.* at p. 212.)

Other state high courts have also adopted the *Rose* factors as general guidelines for their state legislatures to use when developing education adequacy

standards. (*See Lake View Sch. Dist. No. 25 v. Huckabee* (*Lake View III*) (Ark. 2002) 91 S.W.3d 472, 487–88; *Unified Sch. Dist. No. 229 v. State* (Kan. 1996) 885 P.2d 1170, 1185–86; *McDuffy*, *supra*, 615 N.E.2d at p. 554; *Claremont*, *supra*, 703 A.2d at p. 1359; *Leandro*, *supra*, 488 S.E.2d at p. 255; *Abbeville*, *supra*, 515 S.E.2d at p. 540 [adopting a reframed version of the standard].)[18]

Courts have also discerned judicially manageable standards from constitutional provisions that include the "general diffusion of knowledge" language. For example, the Texas Supreme Court adjudicated a case involving an educational funding issue by interpreting the state's Education Clause. (*Neeley*, *supra*, 176 S.W.3d 746.) In interpreting the Texas Education Clause, the court held that:

> By express constitutional mandate, the legislature must make "suitable" provision for an "efficient" system for the "essential" purpose of a "general diffusion of knowledge." While these are admittedly not precise terms, they do provide a standard by which this court must, when called upon to do so, measure the constitutionality of the legislature's actions.

(*Id.* at p. 776.)

Accordingly, the court found that the education clause:

> sets three standards central to the case. One is that the public school system be efficient. . . . [¶] Another standard set by the constitutional provision is that public education achieve "[a] general diffusion of knowledge . . . essential to the preservation of the liberties and rights of the people". . . . [¶] A third

[18] The Arkansas Constitution is the only state constitution among those cited here that includes the same "efficient" language as the Kentucky Constitution. The other cited decisions again refute the State's argument that courts have only found qualitative mandates arising from "strong" qualitative language.

> constitutional standard is that the provision made for public education be "suitable."

(*Id.* at pp. 752–53, citations omitted.) The court then analyzed each standard, and applied them in adjudicating the case.

Likewise, the New Hampshire Supreme Court discerned judicially manageable standards after finding that its state's "general diffusion of knowledge" language required a qualitative right to an education. (*See Claremont*, *supra,* 703 A.2d 1353.) The *Claremont* court defined a constitutionally adequate education as one that "includes broad educational opportunities needed in today's society to prepare citizens for their role as participants and as potential competitors in today's marketplace of ideas." (*Id.* at p. 1359, citations and internal quotation marks omitted.) The *Claremont* court first looked to the seven criteria articulated by the Kentucky Supreme Court in *Rose*, and then promulgated manageable standards of its own based on the *Rose* guidelines. (*Ibid.*)

After articulating these standards, the New Hampshire Supreme Court found that the existing education finance system was inadequate to ensure achievement of the standard, and thereby violated the New Hampshire Education Clause. As a result, instead of deferring to the legislature, the court directed the legislature to cure the constitutional deficiency, stating: "Without intending to intrude upon prerogatives of other branches of government, *see* N.H. Const. pt. I, art. 37, we anticipate that they will promptly develop and adopt specific criteria implementing these guidelines and, in completing this task, will appeal to a broad constituency." (*Claremont*, *supra,* 703 A.2d. at p. 1359.)

Like these sister states, this Court can use the language of Article IX as guidance for developing judicially manageable standards that meet Article IX's mandate that the State provide students with an education that will give them an opportunity for economic, civic and social success.

B. Legislatively-Articulated Content-Based Standards.

As legislatures and state education departments have enacted and/or adopted content-based academic standards and assessment systems, many courts have examined their respective state's education standards in adjudicating educational adequacy claims.[19] Statutory and regulatory standards and related assessments developed by legislatures and state education departments constitute articulations by the legislative and executive branches of educational standards reflective of state values embodied in state constitutions, and thus can provide benchmarks for determining whether children

[19] *See, e.g.*, *Lobato*, *supra*, 218 P.3d at p. 372, fn. 17 (directing the trial court to consider "education reform statutes with proficiency targets and content standards . . . to help evaluate the constitutionality of the legislature's actions"); *Montoy v. State* (Kan. 2005) 102 P.3d 1160, 1164 (noting that the state's "school performance accreditation system, 'based upon improvement in performance that reflects high academic standards and is measurable,'" and its standards for individual and school performance levels comprise the legislature's determination of a constitutionally "suitable" education system) (quoting Kan. Stat. Ann. § 72-6539(a)); *Columbia Falls*, *supra*, 109 P.3d at p. 312 ("Unless funding relates to needs such as academic standards . . . and performance standards, then the funding is not related to the cornerstones of a quality education."); *Neeley*, *supra*, 176 S.W.3d at p. 787 (an adequate public education system is one that is "'*reasonably* able to provide'" students with a "'*meaningful opportunity* to acquire the essential knowledge and skills reflected in . . . curriculum requirements'") (emphasis in original) (quoting district court decision); *Hull v. Albrecht* (Ariz. 1997) 950 P.2d 1141, 1145 ("[A] constitutionally adequate system will make available to all districts financing sufficient to provide facilities and equipment necessary and appropriate to enable students to master the educational goals set by the legislature."); *Abbott v. Burke* (*Abbott IV*) (N.J. 1997) 693 A.2d 417, 432 (noting that the state's curriculum standards "embody the substantive content of a thorough and efficient education").

are being afforded a constitutionally-adequate education. Students' performance under these standards may in turn show whether schools receive sufficient resources to offer an education in line with constitutional norms.[20] (*See also Unified Sch. Dist.*, *supra*, 885 P.2d at p. 1186 [noting that the court will "utilize as a base the standards enunciated by the legislature"]; *Abbott IV*, *supra*, 693 A.2d at p. 428 [concluding that state content and performance standards "spell out and explain the meaning of a constitutional education."].)

Courts have found that such content-based standards provide judges with workable criteria for applying the state constitutional concepts of education that had originally been articulated in the 18th- and 19th-centuries to contemporary needs. Further, they give judges objective, legislatively-created baselines that can inform "judicially manageable standards" for crafting practical constitutional remedies. Holding the other branches of government to standards they have independently adopted also helps avoid intrusion by the courts into policy-making functions that are the province of the other government branches. As the Idaho Supreme Court stated:

> Balancing our constitutional duty to define the meaning of the thoroughness requirement of art. 9 § 1 with the political difficulties of that task has been made simpler for this Court because the executive branch of the government has already promulgated educational standards pursuant to the legislature's directive in I.C. § 33-118.

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[20] While statutory standards provide courts with extremely valuable input, courts have the authority to independently assess, in a deferential manner, whether standards adopted by the legislature constitute a good faith effort to achieve constitutionally adequate education for all children. (*See McCleary v. State* (Wash. 2012) 269 P.3d 227, 251–52; *CFE II*, *supra*, 719 N.Y.S.2d at p. 484.)

(Idaho Schs. for Equal Educ. Opportunity, supra, 850 P.2d at p. 734.)

Similarly, the Supreme Court of North Carolina explicitly directed the trial court to consider the "[e]ducational goals and standards adopted by the legislature" to determine "whether any of the state's children are being denied their right to a sound basic education." (*Leandro*, *supra*, 488 S.E.2d at p. 259, citation omitted.) Although ultimately finding a constitutional violation, the trial judge concluded that certain aspects of the state's education delivery system, including the accountability standards, "met the basic requirements for providing students with an opportunity to receive a sound basic education." (*Hoke Cnty. Bd. of Educ. v. State* (N.C. 2004) 599 S.E.2d 365, 387.)

Additionally, the Washington Supreme Court recently held that the State's "essential academic learning requirements" identify "the knowledge and skills specifically tailored to help students succeed as active citizens in contemporary society" and "specify 'what all students should know and be able to do at each grade level.'" (*McCleary*, *supra*, 269 P.3d at p. 250.) The court found that these essential academic learning requirements help to "provide[] 'specific substantive content to the word education'" in Washington's Education Clause. (*Ibid.*, citation omitted.)

Here, the California State Board of Education has similarly developed a comprehensive set of content-based academic standards that the remand court can use in evaluating whether or not the State's current method of education funding results in a public school system that violates Article IX's qualitative mandate. The State has provided comprehensive model standards in a variety of subject matters including English Language Arts, Literacy in History/Social Studies, Science and Technical

Subjects. According to the State Board of Education, these content-based standards are designed to enable students to "succeed academically, pursue higher education, find challenging and rewarding work, participate in our democracy as informed citizens, appreciate and contribute to our culture, and pursue their own goals and interests throughout their lives." (*See California State Board of Education, English-Language Arts Content Standards for California Public Schools, Kindergarten Through Grade Twelve* (Dec. 1997) p. iv.) These stated purposes and goals are entirely consistent with the holding of the California Supreme Court that the California Constitution guarantees a "fundamental right" to an education that prepares all of California's children to "participate in the social, cultural and political activity of our society." (*Serrano I, supra*, 5 Cal.3d at p. 606, citation and internal quotation marks omitted.)

Accordingly, as courts in many of its sister states have done, this Court can and should draw upon Article IX's constitutional framework and the State-promulgated content-based academic standards to craft a judicially manageable framework through which it can adjudicate claims of educational inadequacy, and devise workable remedies to ensure a constitutionally-adequate education for all of California's school children.

POINT III

THE SEPARATION OF POWERS DOCTRINE OBLIGATES THE COURT TO INTERPRET AND ENFORCE THE EDUCATION CLAUSE OF THE STATE CONSTITUTION TO PROTECT THE RIGHTS GUARANTEED TO CALIFORNIA'S CHILDREN.

The State's arguments that plaintiffs' claims are non-justiciable political questions and are barred by the separation of powers doctrine were properly rejected by the trial court, and have no merit for the reasons that plaintiffs articulate in their Corrected Opening Brief. Consistent with the trial court's ruling on these issues, courts in a large number of other states have similarly rejected arguments made by those states that the courts are an improper forum to seek the vindication of state constitutional education guarantees. Contrary to the State's argument that sole authority to address educational deficiencies lies exclusively in the legislative branch of government (RB at p. 32), this State's courts recognize that each of the three branches of government has important responsibilities under the California Constitution, and no one branch has a monopoly. (*See, e.g., Coastside Fishing Club v. Cal. Res. Agency* (2008) 158 Cal.App.4th 1183, 1204 ["The separation of powers doctrine recognizes that the three branches of government are interdependent, and it permits actions of one branch that may significantly affect those of another branch. The doctrine is not intended to prohibit one branch from taking action properly within its sphere that has the *incidental* effect of duplicating a function or procedure delegated to another branch."], emphasis in original, citations and internal quotation marks omitted; *Case v. Lazben Fin. Co.* (2002) 99

Cal.App.4th 172, 184 ["The branches are interdependent and 'share common boundaries'; 'no sharp line between their operations exists.' Instead, a 'sensitive balance' underlies our tripartite system, and 'assumes a certain degree of mutual oversight and influence.'"], citations omitted; *Nadler v. Schwarzenegger* (2006) 137 Cal.App.4th 1327, 1335 ["Where, as here, a claim is made that the reapportionment plan enacted by the Legislature does not conform to the dictates of our state Constitution, the issue is justiciable."].)

As the Colorado Supreme Court recently observed in an educational equity case, a state Constitution "equally divides the powers of the government between the executive, legislative and judicial branches," which requires all three branches to "co-operate with and complement and at the same time act *as checks and balances against one another*." (*Lobato*, *supra*, 218 P.3d at p. 372, emphasis in original, citations and internal quotation marks omitted.) The failure of the judicial branch to perform its constitutional obligations "would give the legislative branch unchecked power, potentially allowing it to ignore its constitutional responsibility to fashion and fund" the constitutionally-mandated system of public education. (*Ibid.*; *see also Nyquist*, *supra*, 439 N.E.2d at p. 364 (Ct. App. 1982) ["[I]t is . . . the responsibility of the courts to adjudicate contentions that actions taken by the Legislature and the Executive fail to conform to the mandates of the Constitutions which constrain the activities of all three branches."].) The California Constitution vests this Court with the duty to interpret the Constitution, and order remedies for any violations thereof. To abstain from performing this role on the ground that it is a "political question" barred by the separation of powers

doctrine, as the State urges, would be an abdication of this Court's constitutional obligations to (1) determine what the law is, and (2) ensure that the other two branches of government are fulfilling their own constitutional obligations.

The California Supreme Court long ago recognized that the California Constitution guarantees all children of this State a "fundamental right" to an education that prepares them to "participate in the social, cultural and political activity of our society." (*Serrano I, supra*, 5 Cal.3d at p. 606, citation and internal quotation marks omitted.) The State's argument that the legislative branch should have unfettered discretion to determine "whether and how much more to fund education among competing budget priorities" (RB at 33) points to the reason why the Court should not abdicate its role under the Constitution. It is precisely *because* the Legislature is constantly faced with the political pressures involved in choosing among "competing budget priorities" that the judiciary must serve as a non-political bulwark to ensure that children's constitutional right to a public school education not fall victim to political compromise. The current pressures of difficult economic conditions only heighten, not lessen, the temptation of the Legislature to reduce education funding for reasons of short-term expediency, and elevate the importance of the Court's role in protecting children's constitutional rights.

High courts in a large number of states have held not only that the separation of powers doctrine presents no bar to judicial review, but also that the doctrine compels affirmative judicial action in the face of constitutional violations. The New Jersey Supreme Court took such action in an education finance case because, "[t]hir-

Court, as the designated last-resort guarantor of the Constitution's command, possesses and must use power equal to its responsibility." (*Robinson v. Cahill* (*Robinson II*) (N.J. 1975), 351 A.2d 713, 724.) Specifically, these high courts have held that to fulfill their responsibilities as co-equal branches of their states' governments, they are constitutionally obligated to adjudicate claims, such as the plaintiffs' claims here, regarding the constitutional sufficiency of their states' public education systems, provide guidance to the legislature as to the interpretation of the constitutional rights, while deferring to the legislature the responsibility to determine the specific manner in which it will fund and implement the educational opportunities mandated by their state Constitutions. (*See, e.g.*, *Abbeville*, *supra*, 515 S.E.2d at p. 541; *McCleary*, *supra*, 269 P.3d at p. 247). The high courts in many of the states that have found a qualitative right to an education have rejected separation of powers and political questions arguments, concluding that the judiciary had the duty to declare the meaning of the state's Constitution and adjudicate the claims presented.[21] While this brief cannot summarize all of the relevant cases, a few recent court decisions are instructive.

In a recent decision, the New York Court of Appeals summarily rejected the state's argument that claims under the Education Article of the New York Constitution were non-justiciable. New York had urged the court to dismiss the case as non-justiciable, and leave all further issues of educational adequacy to the other two branches of government. Concurring in the court's summary affirmance that the claims were justiciable, one of the high court's Judges observed:

[21] See footnote two, *supra*.

> If we declare that a sound basic education consists only of what the Legislature and Executive dictate, the scope of the State's constitutional duty under the Educational Article and, conversely, the scope of the constitutional rights of our schoolchildren, is limited to what those branches say it is. [Doing so] would not only entrust the Legislature and Executive with the decidedly judicial task of interpreting the meaning of the Education Article but cast them in the role of being their own constitutional watchdogs. . . . Our system of separation of powers does not contemplate or permit such self-policing, nor does it allow us to abdicate our function as "the ultimate arbiters of our State constitution" . . . simply because public funds are at stake. *In short, parsing out what the Education Article actually requires . . . not only enables the Legislature and Executive to fulfill their constitutional mandate but ensures that we in the judiciary do the same.*

(*Hussein v. State* (N.Y. 2012) 973 N.E.2d 752, 754 (conc. opn. of Ciparick, J.), emphasis added, citations and fn. omitted.)

In another decision last year, the Washington Supreme Court explained that although there is a "delicate balancing of powers and responsibilities among coordinate branches of government," which requires the court to "proceed cautiously" and be "appropriately sensitive to the legislature's role in reforming and funding education," nevertheless, "the constitution requires the judiciary to determine compliance with [the Education] article." (*McCleary*, *supra*, 269 P.3d at p. 258.) The court observed that "the long term result" of its previous hands-off approach to questions of educational adequacy under its Constitution "was 30 years of an education system that fell short of the promise of [the Education article], and that ultimately produced this lawsuit." (*Id.* at p. 259.)[22] The court further elaborated that "[w]hat we have learned from experience is that this

[22] Similarly, in the more than 35 years since *Serrano III*, problems with educational funding adequacy in California's education system have progressively worsened.

court cannot stand on the sidelines and hope the State meets its constitutional mandate to amply fund education." (*Ibid.*) Thus, the Washington Supreme Court, declining to leave education adequacy exclusively to the other branches of government, held that:

> While we recognize that the issue is complex and no option may prove wholly satisfactory, this is not a reason for the judiciary to throw up its hands and offer no remedy at all. Ultimately, it is our responsibility to hold the State accountable to meet its constitutional duty under article IX, section 1.

(*Id.* at p. 261.)

A year earlier, in 2011, the Wyoming Supreme Court explained its obligation to adjudicate a constitutional challenge to the state's educational system. (*State v. Campbell Cnty. Sch. Dist.* (*Campbell Cnty. Sch. Dist. II*) (Wyo. 2001) 32 P.3d 325, 332.) The court held that "'[i]f the executive and legislative branches fail to fulfill their duties in a constitutional manner, the Court too must accept its continuing constitutional responsibility ... for overview ... of compliance with the constitutional imperative." (*Ibid.* [quoting Note, *Unfulfilled Promises: School Finance Remedies and State Courts* (1991) 104 Harv. L. Rev. 1088].) The court warned that "staying the judicial hand in the face of continued violation of constitutional rights makes the courts vulnerable to becoming complicit actors in the deprivation of those rights." (*Id.* at p. 333.)

Other states' highest courts have recognized that adjudicating whether a school funding system violates constitutional standards entails no greater usurpation of the authority of the coordinate branches than any other constitutional determination.

(*See, e.g., Seymour v. Region One Bd. of Educ.* (Conn. 2002), 803 A.2d 318, 326.) As New Hampshire's Supreme Court demonstrated in *Claremont* more than a decade ago, courts can properly respect the separation of powers doctrine and the authority of the other branches of government in education adequacy cases, by interpreting their Constitution's educational mandates, directing the legislature to take action on any constitutional deficiencies the Court identifies, and allowing the political branches to determine the specific means through which these deficiencies can be corrected, provided such means "passes constitutional muster." (*Claremont*, *supra*, 703 A.2d at p. 1360. *See also Seymour*, *supra*, 803 A.2d.at p. 324; *Hoke Cnty.*, *supra*, 599 S.E.2d at pp. 390–91; *Roosevelt*, *supra*, 877 P.2d at pp. 815–16.)

The courts' neutral approach to issues, and their institutional long-term stability relative to the elected branches of government, make them essential for providing continuing guidance on constitutional requirements, and sustaining a commitment to meeting constitutional goals. Legislatures are better equipped to develop specific reform policies, and executive agencies are most effective in undertaking the day-to-day implementation and monitoring of the details of education laws and policies. The types of remedial guidelines that have been issued by courts in many other states effectively use the comparative strengths of each of the branches and have led to meaningful vindications of children's constitutional rights. Accordingly, this Court should reject the State's political question and separation of powers arguments, which erroneously urge this Court to abdicate its constitutional obligation to interpret and enforce the Education Article of the California Constitution.

CONCLUSION

For all of the foregoing reasons, this Court should reverse the Superior Court's order sustaining the demurrers, and remand this case for further proceedings.

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Dated: January 16, 2013

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CERTIFICATE OF COMPLIANCE

I hereby certify that the attached Brief of Amici Curiae in Support of Plaintiffs-Appellants by Education Law Center and Campaign for Educational Equity, Teacher's College, Columbia University uses 13-point Times New Roman font and contains 8,691 words including all footnotes but not including the Table of Contents and Authorities, this Certificate, the caption page and signature blocks.

Respectfully submitted,

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DECLARATION OF SERVICE

[TO BE INSERTED BY LOCAL COUNSEL]

DECLARATION OF SERVICE

Case Name: ***Robles-Wong, et al v. State of California, et al*** **(A134424)**
Case Name: ***Campaign for Quality Education v. State of California, et al*** **(A134423)**
Court: **Court of Appeal, First Appellate District, Division 3**

I declare: I am a citizen of the United States, over the age of 18, and not a party to the within action. My business address is 505 Montgomery St., Suite 800, San Francisco, CA 94111.

On January 15, 2013, I served a true and correct copy of the following entitled document:

APPLICATION TO FILE BRIEF OF AMICI CURIAE AND BRIEF OF AMICI CURIAE IN SUPPORT OF PLAINTIFFS-APPELLANTS BY EDUCATION LAW CENTER AND CAMPAIGN FOR EDUCATIONAL EQUITY, TEACHER'S COLLEGE, COLUMBIA UNIVERSITY

on the parties in said action as follows:

_x_ BY MAIL: By placing the envelope(s) for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal-Service in a sealed envelope with postage fully prepaid.

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on 01/15/2013, at SAN FRANCISCO California.

I.L. Girshman

SERVICE LIST

Case Name: ***Robles-Wong, et al v. State of California, et al*** **(A134424)**
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Clerk of the Court Alameda County Superior Court 1225 Fallon Street Oakland, CA 94612 *Case Nos. RG10515768; RGJ 0524770 (The Honorable Stephen A. Brick)*	Supreme Court of California 350 McAllister Street San Francisco, CA 94102 *Provided electronically in accordance with Cal. Rules of Court, Rule 8.212 (c)(2)*
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