Court of Appeals

State of New York

INTEGRATENYC, INC., COALITION FOR EDUCATION JUSTICE, P.S. 132 PARENTS FOR CHANGE, A.C., H.D. EX REL. W.D., M.G. EX REL. M.G., L.S. EX REL. S.G., C.H. EX REL. C.H., Y.K.J. EX REL. Y.J., A.M., V.M. EX REL. J.M., R.N. EX REL. N.N., M.A. EX REL. F.P., S.S. EX REL. M.S., S.D. EX REL. S.S., K.T. EX REL. F.T. AND S.W. EX REL. B.W.,

Plaintiff-Appellant,

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BRIEF OF *AMICI CURIAE* NEW YORK CIVIL LIBERTIES UNION AND EDUCATION LAW CENTER IN SUPPORT OF PLAINTIFFS-RESPONDENTS

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Court of Appeals Docket No. 2024-00099
Appellate Division, First Judicial Department Docket No. 2022-02719
New York County Supreme Court Index No. 152743/2021

-against-

THE STATE OF NEW YORK, KATHY HOCHUL, as Governor of the State of New York, NEW YORK STATE BOARD OF REGENTS, NEW YORK STATE EDUCATION DEPARTMENT, BETTY A. ROSA, as New York State Commissioner of Education, BILL DE BLASIO, as Mayor of New York City,

Defendants-Appellants,

-and-

PARENTS DEFENDING EDUCATION,

Intervenor-Defendant-Appellant.

DISCLOSURE STATEMENT PURSUANT TO RULE 500.1(f)

The New York Civil Liberties Union hereby discloses that it is a non-profit, 501(c)(4) organization, and is the New York State affiliate of the American Civil Liberties Union.

Education Law Center hereby discloses that it is a non-profit, 501(c)(3) organization, and has no parents, subsidiaries, or affiliates.

Pursuant to 22 NYCRR 500.23 (a) (4), *amici* state that no other person or entity has contributed to the content, preparation, or submission of this brief. Additionally, no party, party's counsel, or any other person or entity contributed money that was intended to fund preparation or submission of this brief.

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PRELIMINARY STATEMENT

This case poses the question of whether New York City's maintenance of highly segregated schools is consistent with its responsibility to provide students with the skills required to participate in our modern democracy—the baseline of a sound basic education. *Amici* write to explain that this obligation is satisfied when, among other things, students are able to attend schools free from segregation. Here, the First Department held that plaintiffs-respondents have pleaded sufficient facts to show that the State and City are not currently meeting this obligation.[1] We urge this Court to affirm the First Department's decision.

The skills required for civic participation include an awareness of and familiarity with the racial and cultural diversity presented by contemporary society. By furthering and perpetuating extreme racial segregation, State and City officials impede student exposure to diverse environments. One in six schools in New York City are hyper-segregated apartheid schools, meaning that "99-100% of the student body is nonwhite," and "[e]ssentially *all* students of color attend predominantly nonwhite schools."[2] In addition, in 2024, only twelve percent of offers to the

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[1] Decision and order on motion, in *IntegrateNYC, Inc. v State of New York*, 228 AD 3d 152, 162-163 [1st Dept 2024] [rec at 582-608]; *see also* affirmation of Stefanie D. Coyle in support of mot for leave to file proposed brief of *amici curiae* ("Coyle aff"), exhibit B.

[2] Danielle Cohen, *NYC School Segregation Report Card: Still Last, Action Needed Now*, UCLA Civil Rights Project/Proyecto Derechos Civiles at 11, 36, 52 (June 2021), available at https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/nyc-school-segregation-report-card-still-last-action-needed-now/NYC_6-09-final-for-post.pdf (last accessed Mar. 26, 2025) (Coyle aff, exhibit L).

Specialized High Schools went to Black and Latinx students, while white and Asian students received nearly eighty percent of all offers.[3] These facts, along with others detailed in the amended complaint, show that state and local officials fail to deliver a "sound basic education" for New York City's children and deny them equal protection under the law.

Plaintiffs-respondents argue that New York City has created a multi-tiered system in its schools, harkening to the "separate but equal" system at issue in *Brown v Board of Education* (347 US 483 [1954]). There, the U.S. Supreme Court famously held that the meager and superficial nod to equality inherent in the "separate but equal" concept was insufficient and impermissible because it failed to address the deep and unconscionable social injury presented in that case (*id*. at 495). That injury flowed from the message conveyed by segregated schools. It was a message to Black children that they were inferior to their white counterparts, and, on that account, they should be shunned and confined in separate schools.

We cannot ignore this invidious social message conveyed by the persistent racial segregation of New York City's public schools. The nature of that message exposes the gravity of this lawsuit and the importance of affirming the decision of

[3] *2024 Admissions Cycle Data Release*, Dept of Educ Press Off, available at https://www.schools.nyc.gov/about-us/news/announcements/2024/06/20/2024-admissions-cycle-data-release (last accessed Mar. 26, 2025).

the Court below, to permit a full and fair consideration of the claims advanced by the plaintiffs-respondents.

Proposed *amici* write to support the plaintiffs-respondents' claims under the Education Article and the Equal Protection Clause and to provide additional context regarding the plaintiffs-respondents' allegations of the persistent and severe racial segregation of New York City's schools. Both *amici* have a long history of litigating the contours of New York's Education Article and allegations of racial discrimination and aim to bring that expertise to the Court. *Amici* argue that the consideration of racial integration as a required "input" in the analysis of claims under the Education Article of the New York State Constitution finds support in this Court's precedent, contemporary research on the impacts of segregation on developing citizens, and the decisions of other state courts interpreting their Education Clauses.

The plaintiffs-respondents' brief amply discusses the exploration of justiciability by the Court of Appeals in the *Campaign for Fiscal Equity* cases and thus *amici* do not rehash those arguments.[4] For the foregoing reasons, *amici* respectfully request that this Court uphold the Appellate Division's decision.

[4] *Amici* note that intervenor-defendant-appellant Parents Defending Education ("PDE") misuses and misreads Supreme Court precedent in its argument regarding justiciability (*Students for Fair Admissions, Inc. v President & Fellows of Harvard Coll.*, 600 US 181, 218 [2023]) (brief for intervenor-defendant-appellant at 4, 33, 36-37). First, PDE's attempt to apply the ruling in *Students for Fair Admissions* to the case at bar must fail as that case pertains to higher education, not K-12.

INTEREST OF AMICI CURIAE

The New York Civil Liberties Union ("NYCLU") is the New York State affiliate of the American Civil Liberties Union, and a non-profit, non-partisan organization with over 85,000 members and supporters. Through its Education Policy Center, the NYCLU advocates for equitable access to quality education for all young people in New York.[5]

The NYCLU has regularly litigated and participated as *amicus curiae* in cases regarding students' right under the Education Article of the New York State Constitution to a "sound basic education" and challenging racial discrimination in schools. For example, the NYCLU submitted *amicus curiae* briefs to the Court of Appeals in both *Campaign for Fiscal Equity* cases (*see Campaign for Fiscal Equity, Inc. v State of New York*, 86 NY2d 307 [1995] [hereinafter "*CFE I*"]; *Campaign for Fiscal Equity v State of New York*, 100 NY2d 893 [2003] [hereinafter "*CFE II*"]) and to the Third Department in both *Maisto v State* cases (154 AD3d 1248 [3d Dept 2017] [hereinafter "*Maisto I*"]; 196 AD3d 104 [3d Dept 2021] [hereinafter "*Maisto*

The applicable precedent for K-12 education is *Parents Involved in Community Schools v Seattle School District No. 1* (551 US 701 [2007]). In that case, Justice Kennedy, who wrote the controlling opinion, expressly dismissed a reading of the Constitution that "mandates that state and local school authorities must accept the status quo of racial isolation in schools" as "profoundly mistaken," and stated that school authorities should be "free to devise race-conscious measures to address the problem in a general way and without treating each student in different fashion based solely on a systematic, individual typing by race" (*id*. at 788-789). At any rate, *Parents Involved* is inapposite here, as it bears on remedy, not justiciability.

[5] A more detailed statement of interest for both *amici*, the NYCLU and ELC, is submitted as part of the affirmation of Stefanie D. Coyle.

II"]). Most recently, the NYCLU filed an *amicus curiae* brief in this case when it was heard by the First Department (*see* rec at 583). In addition to its litigation work, the NYCLU is deeply involved in policy advocacy and organizing regarding school desegregation and integration in New York City.[6]

Education Law Center ("ELC") is a non-profit organization that pursues justice and equity for public school students by enforcing their right to a high-quality education in safe, equitable, non-discriminatory, integrated, and well-funded learning environments. ELC advocates for access to fair and adequate educational opportunity under state and federal laws through policy initiatives, research, public education, and legal action. ELC represented the plaintiffs in the landmark case *Abbott v Burke* (119 NJ 287 [1990]), which was a challenge to inadequate educational opportunities under the Education Clause of the New Jersey Constitution. ELC has also served as co-counsel representing plaintiffs in two cases interpreting the constitutional right to education in New York: *Maisto v State* (*see Maisto I* & *Maisto II*) and *New Yorkers for Students' Educational Rights v State of*

[6] *See* Miriam Nunberg & Toni Smith-Thompson, NYCLU Commentary, *Especially now, public schools for all: NYC should do away with middle- and high-school admissions screens* (Oct. 9, 2020), available at https://www.nyclu.org/en/publications/especially-now-public-schools-all-nyc-should-do-away-middle-and-high-school-admission (last accessed Mar. 26, 2025); *Testimony of the NYCLU and the ACLU before The New York City Council Committee on Education and Committee on Civil and Human Rights Joint Hearing on School Segregation in New York City*, New York Civil Liberties Union (May 3, 2019), available at https://www.nyclu.org/en/publications/testimony-school-segregation-new-york-city-schools (last accessed Mar. 26, 2025).

New York (2014 NY Slip Op 32930(U) [Sup Ct, NY County 2014]) and is co-counsel in two school segregation cases brought under state Education Clauses in New Jersey and Minnesota. ELC has participated as *amicus curiae* in state Education Clause cases in California, Colorado, Connecticut, Delaware, Florida, Indiana, Kansas, Maryland, North Carolina, Oregon, Pennsylvania, South Carolina, Texas, Washington, and Wyoming.

Amici submit this brief because this appeal raises important issues regarding the reach of the Education Article of the New York State Constitution and the application of the state Equal Protection Clause.

ARGUMENT

I. THE PLAINTIFFS-RESPONDENTS HAVE STATED A CLAIM UNDER ARTICLE XI, § 1 OF THE NEW YORK STATE CONSTITUTION.

Because plaintiffs-respondents have alleged that New York has failed to remedy deficient inputs, including school segregation, which result in deficient outputs in New York City public schools, they have stated a claim under New York State Constitution article XI, § 1.

The Education Article imposes an affirmative obligation on the State to provide a "sound basic education": "The 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" (NY Const, art XI, § 1) [emphasis added]. In

interpreting the Education Article of the New York State Constitution, this Court has observed that public education must provide students not only with "basic literacy, calculating and verbal skills" but also with the "knowledge, understanding and attitudes necessary" for "meaningful civic participation" (*CFE I,* 86 NY2d at 316-319; *CFE II*, 100 NY2d at 905).[7] The State's failure to fulfill this constitutional mandate gives rise to a judicially cognizable cause of action (*CFE I*, 86 NY2d at 316).

In order to sustain a claim under the Education Article, plaintiffs must allege "the deprivation of a sound basic education, and causes attributable to the State" (*New York Civ. Liberties Union v State of New York*, 4 NY3d 175, 178-179 [2005]). A court must then consider the specific resources made available to students in the district (the "inputs") and the resulting academic and life outcomes of the district's students (the "outputs") (*CFE II*, 100 NY2d at 908). In alleging a causal link between State action or inaction and the deprivation of a sound basic education to the students in the relevant district, the plaintiffs need not establish that the State action or inaction at issue is the *sole* cause of the inadequate education (*CFE II*, 100 NY2d at 919-923). Rather, plaintiffs must allege that it is *a* cause (*id*. at 923). As the First

[7] This obligation to equip students for productive citizenship is one even recognized by defendants-appellants (reply brief for City defendants-appellants at 15-16 ["This Court determines whether 'allegations of academic failure' state a cause of action under the Education Article by analyzing whether graduating students can meaningfully participate in contemporary society through voting, serving on a jury, and finding a job."]).

Department held in the instant case (rec at 591-592), and the plaintiffs-respondents explain in their brief (brief for plaintiffs-respondents 26-29), the State action or inaction need not be limited to inadequate funding.[8]

Here, the plaintiffs-respondents have alleged facts that state a claim for a violation of the right to a "sound basic education" in New York City, as guaranteed by the Education Article of the New York State Constitution.[9]

A. New York Precedent Supports an Expansive View of Inputs.

New York law supports an evolving view of what constitutes a claim under the Education Article. This Court has recognized that it has not yet delineated the full "contours of all possible Education Article claims" (*Paynter v State*, 100 NY2d 434, 441 [2003]). Because the definition of a "sound basic education" under the Education Article must "serve the future as well as the case now before us," the elements of an Education Article claim must evolve in order to ensure that a sound basic education is "placed within reach of all students" (*CFE II,* 100 NY2d at 915, 931). As the First Department recognized in its decision in this case, "[t]he concept

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[8] Intervenor-defendant-appellant PDE claims that the amended complaint should be dismissed because plaintiffs-respondents have "not proposed an actionable remedy" (brief for intervenor-defendant-appellant at 18-20). However, it is more appropriate to consider the remedy requested by plaintiffs-respondents once the issue of liability is resolved (*Matter of Bezio v New York State Off. of Mental Retardation & Dev. Disabilities*, 62 NY2d 921, 924 [1984] ["But the fact that the petition asked for more relief than can be granted under the particular section does not affect its sufficiency to state a cause of action."]).

[9] *Amici* agree with plaintiffs-respondents that the First Department's decision on causation was correct (rec at 594-597, brief for plaintiffs-respondents at 30). Accordingly, *amici* will only address inputs and outputs in this brief.

of a sound basic education is a dynamic one that has, to a large extent, evolved over time to 'serve the future'" (rec at 593, quoting *CFE II*, 100 NY2d at 931).

Indeed, the *CFE* Court's approach to the inputs necessary for a sound basic education demonstrates this dynamism. In its 1995 decision allowing the *CFE* case to proceed to trial, this Court set forth what it termed a "template" of inputs, to be further developed at trial. That template consisted of adequate facilities, instrumentalities of learning, and adequate teaching of reasonably up-to-date curricula (*CFE I*, 86 NY2d at 317). The Court of Appeals stressed that this template was not a definitive list of all of the inputs necessary for a constitutionally adequate education (*id*. at 317-318). The Court further emphasized that, given the procedural posture of that case, "[w]e do not attempt to definitively specify what the constitutional concept and mandate of a sound basic education entails" and further development of the factual record was necessary (*id*.).

Following the Court of Appeals' directive, the trial court then further developed the "template" of inputs, defining it to include "at least" the following categories of resources:

1. Sufficient numbers of qualified teachers, principals and other personnel.
2. Appropriate class sizes.
3. Adequate and accessible school buildings with sufficient space to ensure appropriate class size and implementation of a sound curriculum.
4. Sufficient and up-to-date books, supplies, libraries, educational technology and laboratories.

5. Suitable curricula, including an expanded platform of programs to help at-risk students by giving them 'more time on task.
6. Adequate resources for students with extraordinary needs.
7. A safe orderly environment (*Campaign for Fiscal Equity v State of New York*, 187 Misc2d 1, 114-115 [Sup Ct, NY County 2001]).

On appeal, this Court affirmed that the trial court properly expanded upon its outline: "In keeping with our directive, the trial court first fleshed out the template for a sound basic education that we had outlined in our earlier consideration of the issue" (*CFE II*, 100 NY2d at 902). It is evident that the three input categories the Court of Appeals set forth before trial were to serve merely as a general blueprint for the trial court, rather than a narrow and finite list of resources (*id*. at 902-907).

Courts have continued to emphasize this expansive view of "inputs." In 2021, the Third Department allowed for a comprehensive view of the inputs necessary to place a "sound basic education within reach of" the "at-risk" students in eight small city school districts (*Maisto II*, 196 AD3d at 116-118). The court there found a violation of the Education Article based on the deficiency of inputs such as: social workers, guidance counselors, pre-kindergarten, academic intervention services, instructional coaches, and services for students with disabilities and interventions for English learners, among other inputs (*id.* at 152). It stands to reason that a standard that sets forth the essential resources necessary for an adequate education would evolve, consistent with the evolving nature of our culture and as society's understanding of what students need to learn advances.

1. Deficiencies in Inputs – School Resources.

Here, continuing to abide by the ample legal precedent, the First Department recognized that the plaintiffs-respondents alleged sufficient facts showing deficiencies in the "inputs" required for a "sound basic education" (rec at 594-596). Despite defendants-appellants' assertions to the contrary (*see* reply brief for City defendants-appellants at 17), throughout the amended complaint, the plaintiffs-respondents paint a clear picture of deficient "inputs" across the NYC school system. For example, the plaintiffs-respondents allege that New York City Public Schools ("NYCPS") provides inadequate teaching staff by "[f]ailing to recruit, retain, and support a racially diverse educator workforce to provide challenging and empathic instruction to all students" (amended complaint ¶ 5 [rec at 13-86]). This leads to a "dearth of teachers of color" (*id.* ¶ 121) and high turnover rates for Black and Latinx teachers (*id*. ¶ 135). NYCPS also fails to provide adequate "training, support, and resources" to educators so that they can provide a "racially equitable and culturally responsive curriculum" to students (*id*. ¶ 109). These problematic practices negatively impact students as "faculty integration is essential to student integration" (*Caulfield v Bd. of Educ. of City of New York*, 632 F2d 999, 1005 [2d Cir 1980])[10]

[10] New York State recognizes the critical role a diverse educator workforce plays in effective education (New York State Education Department, *Educator Diversity Report* 12 [Dec. 2019], http://www.nysed.gov/common/nysed/files/programs/educator-quality/educator-diversity-report-december-2019.pdf [last accessed Mar. 26, 2025] [Coyle aff, exhibit M]).

and, as will be discussed below, *infra* I. a. 2, student integration is an essential educational input.

The plaintiffs-respondents allege particularly egregious deficiencies with respect to facilities, which should be designed to "provide enough light, space, heat, and air to permit children to learn" (*CFE I*, 86 NY2d at 317). Instead, the amended complaint alleges, students of color are "disproportionately relegated to neglected schools—some of which are former factories, others of which are situated above or near major highways—in which the overcrowded classrooms, the battered textbooks, the unsanitary bathrooms, and the presence of vermin all bear witness to the (lack of) value ascribed by the City and State to their occupants" (amended complaint ¶ 6). Students "struggle to focus and speak in class over the constant din of passing cars, motorcycles, and trucks, which also expose the students to high levels of vehicle pollution. The cafeteria [of the school described] is a windowless space in the basement; many classrooms have no windows at all" (amended complaint ¶ 100). Students "frequently encounter vermin, such as rats and cockroaches, in classrooms and hallways" (*id*.). There are also "[r]ecurrent leaks in school hallways," "[o]vercrowded hallways and classrooms," and "[n]o toilet paper in the bathroom[s]" (*id*.). These neglected and cramped facilities and abysmal conditions fail to meet the minimal standards required by New York's Constitution.

The plaintiffs-respondents also adequately pleaded deficiencies with respect to "instrumentalities of learning," including textbooks and adequate curriculum. The plaintiffs-respondents allege unequal resources distributed in New York City among elite schools (available to students who succeed in passing rigorous entrance exams) and "unscreened schools" that draw students "randomly from [a] pool" of applicants."[11] Students of color in "unscreened schools"—where students of color predominate—face "[a]n insufficient number of textbooks, requiring a single textbook to be shared by up to three students," as well as "outdated and dilapidated textbooks" (amended complaint ¶ 100). Students also face deficiencies in curriculum (*id*. ¶¶ 104-117), including curricula that fails to reflect the "histories, achievements, and voices of historically marginalized people of color, such that students of color rarely, if ever, recognize themselves in their curriculum" (*id*. ¶¶ 15, 116-117).

NYCPS also neglects to provide adequate supplemental support services by "[f]ailing to provide sufficient training, support, and resources to enable administrators, teachers, and students to identify and dismantle racism, such that students of color regularly experience racialized harms at school, and failing to provide adequate mental health supports to redress those harms" (*id*. ¶ 5). For

[11] *See also* Przemyslaw Nowaczyk & Joydeep Roy, *Preferences and Outcomes: A Look at New York City's Public High School Choice Process*, New York City Independent Budget Office (Oct. 2016), available at https://www.ibo.nyc.ny.us/iboreports/preferences-and-outcomes-a-look-at-new-york-citys-public-high-school-choice-process.pdf (last accessed Mar. 26, 2025) (Coyle aff, exhibit N).

example, the plaintiffs-respondents allege that an English Language Learner student was not provided language-appropriate mental health support and suffered immensely (*id*. ¶ 145). This type of neglect occurs across the system.

As these examples demonstrate, the amended complaint's detailed allegations of deficiencies in essential school resources are sufficient to establish the "inputs" prong of the *CFE* test (*id*. ¶¶ 5, 15, 109, 128).

2. Deficiencies in Inputs – School Integration.

The plaintiffs-respondents have alleged facts which, taken as true at this juncture, state a claim for a violation of the Education Article of the New York State Constitution under the most basic standards respecting a "sound basic education." As discussed above, Court of Appeals precedent demands an evolving notion of inputs in order to fulfill the constitutional mandate to provide a "sound basic education" that meets present and future needs. Because this suit is, at bottom, a school desegregation case, there is one input that is particularly pertinent here: school integration.

The ultimate goal of New York's Education Article is "meaningful civic participation in contemporary society" (*CFE II*, 100 NY2d at 905; *see also IntegrateNYC, Inc.*, rec at 595 [explaining that *CFE II* "contemplated that the requisite skills for meaningful civic participation might involve more than basic academic skills . . ."]). The *CFE* Court noted that the "purposive orientation for

schooling has been at the core of the Education Article since its enactment in 1894" (*CFE II*, 100 NY2d at 905). The Court observed that the Committee on Education's concern at the time of the Education Article's adoption was that "the public problems confronting the rising generation will demand accurate knowledge and the highest development of reasoning power more than ever before . . ." (*id*. [internal quotation marks and citation omitted]). As well-demonstrated by legal scholars, social science research, and sister state precedent, school integration is a critical input in enabling students to discharge their duties as citizens, as required by the New York State Constitution.

School integration is essential in developing the skills and attitudes necessary for responsible citizenship. In a recent essay on the definition of "sound basic education" laid out in the Restatement of Children and the Law, Justice Goodwin Liu of the California Supreme Court emphasized that providing "the knowledge and skills necessary for effective and responsible participation 'in society' and 'in a democratic system of self-governance'" requires teaching "our young people to engage in constructive dialogue and find common purpose across lines of race, class, religion and politics . . . " (Goodwin Liu, *Some Thoughts on a Developmental Approach to a Sound Basic Education*, 91 U Chi L Rev 437, 446 [2024], quoting Restatement of Children and the Law § 5.10 [Revised Tentative Draft No. 4, 2022] [Coyle aff, exhibit E]). Indeed, the U.S. Supreme Court has long recognized that

education is "a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment" (*Brown v Bd. of Educ. of Topeka,* 347 US 483, 493 [1954]). Moreover, an "intangible" harm of racial segregation is that it "generates a feeling of inferiority as to their status in the community that may affect [children's] hearts and minds in a way unlikely ever to be undone" (*id*. at 493-494).

A well-established body of research shows that intergroup and racial biases emerge in childhood and, without intervention, will persist and increase through adulthood (*see* Melanie Killen, Katherine Luken Raz, & Sandra Graham, *Reducing Prejudice Through Promoting Cross-Group Friendships*, 0 Rev Gen Psychol 1, 1-2 [2021]) (Coyle aff, exhibit F). These biases lead to behaviors such as social exclusion that, if not redressed, have long-term negative consequences on mental health, as well as academic and life outcomes (*id*. at 2). Intergroup attitudes are more malleable in childhood, and thus those attitudes can be changed before they become ingrained (*id*.). Studies show that children attending integrated schools, particularly those who start in elementary school, have greater cross-racial understanding, reduced racial prejudice, increased levels of critical thinking, and exhibit higher levels of academic achievement than students attending segregated schools (*see* brief of 553 social scientists as *amici curiae* in support of respondents in *Parents Involved in Community Schs. v Seattle Sch. Dist. No. 1*, 551 US 701 [2007], 5-12 [Coyle aff,

exhibit G]; *see also* Roslyn Arlin Mickelson, *School Integration and K-12 Outcomes: An Updated Quick Synthesis of the Social Science Evidence*, National Coalition on School Diversity [Oct. 2016], available at https://www.diverseschools.org/_files/ugd/4ed1cf_fa9cb4460399439a90e0b6cee6762097.pdf [last accessed Mar. 26, 2025] [Coyle aff, exhibit H]; *The Benefits of Socioeconomically and Racially Integrated Schools and Classrooms*, The Century Foundation [Apr. 29, 2019], available at https://production-tcf.imgix.net/app/uploads/2016/02/26171529/Factsheet_Benefits_FinalPDF.pdf [last accessed Mar. 26, 2025] [finding that students in integrated schools have higher test scores, improved self-confidence, and are better prepared to participate in modern society] [Coyle aff, exhibit I]). Students clearly need more than basic academic skills to participate meaningfully in our democracy.

Moreover, studies demonstrate that integrated schools contribute to social cohesion and segregated schools, the converse. Adults who attended segregated schools are more likely to prefer same-race neighbors, and to prefer that their children attend same-race schools, than their counterparts who attended integrated schools, and they are less able to navigate multi-cultural environments across institutional contexts (*see* Jomills Henry Braddock II & Amaryllis del Carmen Gonzalez, *Social Isolation and Social Cohesion: The Effects of K–12 Neighborhood and School Segregation on Intergroup Orientations*, 112 Teachers Coll Rec 1631

[2021] [Coyle aff, exhibit J]; Linda R. Tropp & Suchi Saxena, *Re-Weaving the Social Fabric through Integrated Schools: How Intergroup Contact Prepares Youth to Thrive in a Multiracial Society*, National Coalition on School Diversity [May 2018], available at https://www.diverseschools.org/_files/ugd/4ed1cf_5e52d9ff2fa54c22b1b1487d43f14b18.pdf [last accessed Mar. 26, 2025] [Coyle aff, exhibit K]). The social skills developed in integrated schools are critical to mend and maintain our social fabric as American society becomes more diverse.

Courts in sister states have found that school segregation is antithetical to the civic purpose of the Education Clauses in their state constitutions and consequently have found that challenges to school segregation are cognizable under those clauses. This Court should do the same.

As in New York, New Jersey's Education Clause is intended "to embrace 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" (*Robinson v Cahill*, 62 NJ 473, 515 [1973]). New Jersey has long recognized that "maintenance of a diverse student population is a critical element in the delivery of" an education that prepares students for citizenship (*In re Petition for Authorization To Conduct a Referendum on the Withdrawal of N. Haledon Sch. Dist. from the Passaic County Manchester Regional High Sch. Dist.* ["*North Haledon*"], 181 NJ 161, 175 [2004]

[internal quotation marks and citation omitted]). As the New Jersey Supreme Court declared:

> In a society such as ours, it is not enough that the 3 R's [reading, writing and arithmetic] are being taught properly for there are other vital considerations. The children must learn to respect and live with one another in multi-racial and multicultural communities and the earlier they do so the better. It is during their formative school years that firm foundations may be laid for good citizenship and broad participation in the mainstream of affairs (*Booker v Bd. of Educ. of City of Plainfield, Union County*, 45 NJ 161, 170-171 [1965]).

Therefore, New Jersey courts "consistently have held that racial imbalance resulting from *de facto* segregation is inimical to the constitutional guarantee" of an adequate education (*North Haledon,* 45 NJ at 177).

Minnesota's constitution also emphasizes the inextricable link between education and democracy. Minnesota's Education Clause imposes the duty to establish a public education system on the legislature because "[t]he stability of a republican form of government depend[s] mainly upon the intelligence of the people" (Minn Const, art XIII, § 1). Thus, Minnesota's Supreme Court has defined an adequate education as one that "will fit [students] to discharge intelligently their duties as citizens of the republic" (*Cruz-Guzman v State*, 916 NW2d 1, 8 [Minn 2018], quoting *Bd. of Educ. of Sauk Ctr. v Moore*, 17 Minn 412, 416 [1871]). And, as in New Jersey, Minnesota's highest court has held that challenges to school segregation can be brought under that state's Education Clause (*id*. at 9-10).

Contemporary society exhibits broad racial and cultural diversity. Participation in such a society requires the skill of adaptability as well as familiarity with and tolerance of difference in "others." The development of such skills requires, at the least, exposure to such diversity. Severe racial segregation impedes such exposure, reducing the likelihood that students will learn from students and teachers who present different experiences and cultures.

Here, the plaintiffs-respondents have alleged unconscionable and systemic racial segregation in NYC schools. These allegations are supported by even more recent research showing that New York schools remain the most segregated in the entire country (*see generally* Cohen, *supra* at n 2).

By furthering and perpetuating racial segregation, State and City officials impede student exposure to diverse environments. They deny white and nonwhite students alike the opportunity to learn in an integrated environment. They also convey a message that reinforces a white-dominant social hierarchy and instills feelings of inferiority and disadvantage among Black and Brown children. They communicate that the continued segregation and subordination of Black and Brown children is acceptable. And they utterly fail to recognize that equal participation in democratic self-government remains an empty promise without the realistic prospects of equal educational opportunity. So understood, school integration is appropriately considered among the crucial "inputs" necessary to a "sound basic

education" in New York City and, through its perpetuation of racially segregated schools, New York's school system fails in its Education Article obligation to prepare students for civic participation in the twenty-first century.

As explained above, there is abundant support for this Court to consider integration as an "input" integral to an Education Article claim, and plaintiffs-respondents have pleaded sufficient facts to make out such a claim (*see generally* amended complaint). Therefore, the First Department's denial of the defendants-appellants' motions to dismiss should be upheld.

3. Deficiencies in Outputs.

In order to determine whether students are receiving the opportunity for an education that enables them to function productively as civic participants, New York courts have considered various "outputs" (*CFE II*, 100 NY2d at 903, 908 [test scores, graduation rates]; *Aristy-Farer v State of New York,* 29 NY3d 501, 515 [2017] [poor standardized test proficiency, high failure and drop-out rates, poor English proficiency, and inability to meet basic requirements to gain admission to city or state colleges]). The plaintiffs-respondents clearly allege deficient outputs across New York City schools, including unsatisfactory test scores and graduation rates. The plaintiffs-respondents allege that gross and glaring deficiencies in K-8 education for students of color lead to low test scores, particularly for the Specialized High School Admissions Test (amended complaint ¶ 13 [explaining that only 7, 10, and 8

Black students were admitted to Stuyvesant High School in 2019, 2020, and 2021 respectively]). The plaintiffs-respondents also allege that there are clear deficiencies in graduation rates across NYC schools—"in 2020, the graduation rate for Black students was 75.9 percent, nearly eight percentage points lower than that of white students. The City's Latinx students graduated at an even lower rate—74.1 percent, or close to 10 percentage points below white students. And English language learners had a graduation rate of only 45.7 percent" (*id*. ¶ 83).

These deficient outputs have continued, maintaining a ten percentage point graduation rate gap between white students and students of color, with the 2024 graduation rate for Black students at 80%, Latinx students at 79%, and white students at 90% (*NYC Public Schools Graduation Rate Data, 4 Year Outcome as of August 2024*, New York State Education Department, https://data.nysed.gov/gradrate.php?year=2024&instid=7889678368 [last accessed Mar. 26, 2025]).

Plaintiffs-respondents' allegations of inadequate inputs and outputs are clearly sufficient to withstand a motion to dismiss their Education Article claim. Accordingly, the First Department's decision should be affirmed.

II. THE PLAINTIFFS-RESPONDENTS HAVE STATED AN EQUAL PROTECTION CLAIM UNDER ARTICLE I, § 11 OF THE NEW YORK STATE CONSTITUTION.

The plaintiffs-respondents contend that New York City's racially segregated school system violates the Equal Protection Clause of the New York State Constitution. As relevant to the allegations in the amended complaint and prior to its amendment on January 1, 2025, this constitutional provision has been interpreted to furnish protection that is at least as broad as that offered by the Fourteenth Amendment to the federal Constitution (*Brown v State of New York*, 89 NY2d 172, 191 [1996]).[12]

There have been circumstances in which this clause was found to be even more protective of individual rights than its federal counterpart (*compare Vil. of Belle Terre v Borass*, 416 US 1 [1974], *with City of White Plains v Ferraioli*, 34 NY2d 300 [1974] [equal protection challenges to local zoning laws]; *compare also Alevy v Downstate Med. Ctr. of State of N.Y.*, 39 NY2d 326 [1976], *with Regents of the Univ. of California v Bakke*, 438 US 265 [1978] [constitutional standards for reviewing "affirmative action" programs]). Under this expansive protection, the

[12] On January 1, 2025, the New York Equal Rights Amendment ("ERA") took effect, amending article I, § 11 of New York State's Constitution to expand the enumerated protected categories of persons. This *amici* brief analyzes the Equal Protection Clause in article I, § 11 of the New York State Constitution as it was written prior to the passage of the ERA and the Clause's amendment. This Court should find that plaintiffs-respondents have stated a claim as to a violation of New York's Equal Protection Clause prior to its amendment and remand the case to the lower court to determine, among other things, whether there is any claim as to New York's post-ERA expanded Equal Protection Clause.

allegations in the amended complaint—which must be accepted as true at this stage—provide ample support for the claim of a violation of the New York State Equal Protection Clause.

The standard for stating a violation of the New York State Equal Protection Clause requires allegations of discriminatory intent, which plaintiffs-respondents have provided here. As the U.S. Supreme Court and New York Court of Appeals have recognized, the analysis of intentional discrimination on the basis of race involves a fact-intensive inquiry and inferences of impermissible intent can be drawn from a broad array of historic and contextual considerations (*Arlington Hgts. v Metro. Hous. Auth.*, 429 US 252, 266-267 [1977]; *CFE I*, 86 NY2d at 321 [citing *Arlington Hgts.*, 429 US at 264-265]). In *Arlington Heights*, the Court recognized that "determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available" (*Arlington Hgts.*, 429 US at 266). The Court further observed that proof of an impermissible motive may be inferred from "[t]he historical background" of a practice, from the "sequence of events leading up to the challenged decision," and from "[d]epartures from the normal procedural sequence" (*id*. at 267).

The U.S. Supreme Court has also held that "actions having foreseeable and anticipated disparate impact are relevant evidence to prove . . . forbidden purpose" under the *Arlington Heights* framework (*Columbus Bd. of Educ. v Penick*, 443 US

449, 464 [1979]). While "disparate impact and foreseeable consequences, without more, do not establish a [federal] constitutional violation," a district's "[a]dherence to a particular policy or practice 'with full knowledge of the predictable effects of such adherence upon racial imbalance in a school system is one factor among many others which may be considered by a court in determining whether an inference of segregative intent should be drawn'" (*id*. at 464-465, quoting 429 F Supp 229, 255 [SD Ohio 1977]; *see also United States v Yonkers Bd. of Educ.*, 837 F2d 1181, 1228 [2nd Cir 1987] [holding that school board acted with segregative intent where it was foreseeable that its adherence to a neighborhood-school policy "would further lock the . . . school system into its segregated patterns"]; *Arthur v Nyquist*, 573 F2d 134, 144 [2d Cir 1978] [citing fact that Buffalo school board was "on notice" that its policy of allowing students to transfer schools to study certain foreign languages contributed to racial segregation and yet continued to permit practice as evidence of segregative intent]).

This multifactorial *Arlington Heights* analysis has been employed by courts across New York State, including this one (*CFE I*, 86 NY2d at 353 [Smith, J., dissenting]; *Suffolk Hous. Servs. v Town of Brookhaven*, 109 AD2d 323, 338 [2d Dept 1985], *affd* 70 NY2d 122, 128 [1987] [analyzing "remarks made by local residents… the town's withdrawal of its initial support of the project in the face of community opposition," "the pretextual nature of the stated reasons for its rejection

of the project" and "the wide-spread use of 'code words'" to determine whether there was evidence of discriminatory intent in a zoning decision to limit subsidized housing]; *People v Carroll*, 519 NYS2d 110, 111 [Syracuse City Ct 1987] [utilizing *Arlington Heights* factors to analyze a challenge to criminal statute].

In this case, the First Department correctly found that the plaintiffs-respondents have satisfied the requirements of the *Arlington Heights* standard. The plaintiffs-respondents have alleged acts of invidious and purposeful discrimination associated with the enactment of the 1971 Hecht-Calandra Law imposing the Specialized High School Admissions Test ("SHSAT") (amended complaint ¶¶ 12, 94, 158). The City's subsequent policy decisions, including the decision to designate five new high schools as specialized high schools and its failure to assess bias, equity, and fairness in the test, have entrenched the discriminatory effects of the exclusive reliance on the SHSAT (*id*. ¶ 94 n 94, n 95, ¶ 95). Plaintiffs-respondents have reinforced their claim of intentional discrimination with a cumulative array of examples of policies and practices that have an unjustified disparate impact upon Black and Latinx students. These other examples include the racial imbalance in the hiring and assignment of teachers (*id*. ¶ 80); the maintenance of Gifted & Talented ("G&T") programs that rely upon criteria that unfairly discriminate against Black and Latinx students, including offering priority admission to siblings of children

enrolled in G&T programs (*id*. ¶¶ 84-88); and evidence of disparities in the discipline of Black and Latinx students (*id*. ¶¶ 82, 102).

Furthermore, plaintiffs-respondents allege that the State and City continued to rely on standardized tests despite years of evidence – and, in the case of the SHSAT, decades of evidence – that they were compounding racial segregation in NYCPS (*id*. ¶¶ 81, 84, 95, 99, 157-158). Plaintiffs-respondents also allege that the belated remedial measures implemented by NYCPS were ineffective and insufficient (*id*. ¶¶ 85, 96, 98; *see also Floyd v City of New York*, 813 F Supp 2d 417, 453 [SDNY 2011] [denying defendants' summary judgment motion on plaintiffs' Equal Protection claims where plaintiffs presented evidence of both racial disparities and the "inadequacy of the City's efforts to take remedial steps" to address them]); *see also IntegrateNYC, Inc.*, rec at 603 ["Even when remedial efforts are taken, it is still possible to infer intent based on 'the inadequacy' of those efforts"] [quoting *Floyd*, 813 F Supp 2d at 453]). For example, the temporary alternative assessment system for G&T programs relied on parent nominations and "subjective" and "nontransparent" evaluations, an approach that is unlikely to address racial disparities (amended complaint ¶¶ 8, 84-85).

Taken together, the full range of allegations of intentionally discriminatory behavior, reinforced by policies that have racially disparate impacts, establish a

sufficient basis to conclude that the plaintiffs-respondents have alleged a *prima facie* case under the New York State Equal Protection Clause.

As the First Department correctly recognized, "plaintiffs sufficiently pleaded intent in connection with their equal protection challenge to the G&T test, the SHSAT, and other standardized admissions tests used in screened middle and high schools" (rec at 601). The court therefore found that the "facts supporting an inference of discriminatory intent" were sufficient to state a claim against both the State and the City (*id*.). This Court should uphold the First Department's determination that plaintiffs-respondents stated a claim for a violation of New York State's Equal Protection Clause as to both the City and State defendants.

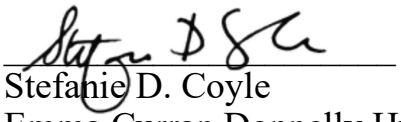
CONCLUSION

For the foregoing reasons, *amici curiae* join in support of the plaintiffs-respondents to urge this Court to uphold the judgment of the Appellate Division, First Department and find that the plaintiffs-respondents stated a claim for violations of the Education Article and Equal Protection Clause of the New York State Constitution.

Dated: March 27, 2025
New York, New York

Respectfully submitted,

NEW YORK CIVIL LIBERTIES UNION FOUNDATION



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CERTIFICATE OF COMPLIANCE

Pursuant to the State of New York, Court of Appeals Rules of Practice, 22 NYCRR Part 500.1(j) and Part 500.13(c)(1) and (c)(3), I hereby certify that the foregoing brief was prepared on a word processor using Times New Roman, a proportionally spaced typeface, with a point size of 14 for the body (double-spaced), 14 for block quotations (single-spaced), and 12 for footnotes (single-spaced). The total number of words in the brief, inclusive of point headings and footnotes and exclusive of pages containing the disclosure statement, table of contents, table of citations, proof of service, certificate of compliance, or any authorized addendum containing statutes, rules and regulations, etc. is 6,733.

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