

Court of Appeals
of the
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.,

Plaintiffs-Respondents,

– 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,
NEW YORK CITY DEPARTMENT OF EDUCATION and MEISHA PORTER,
as Chancellor of the New York City Department of Education,

Defendants-Appellants,

– and –

PARENTS DEFENDING EDUCATION,

Intervenor-Defendant-Appellant.

**BRIEF FOR *AMICUS CURIAE* CENTER FOR EDUCATIONAL
EQUITY, TEACHERS COLLEGE, COLUMBIA UNIVERSITY
IN SUPPORT OF NEITHER PARTY**

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TABLE OF CONTENTS

INTEREST OF AMICI CURIAE.....	1
PRELIMINARY STATEMENT	2
ARGUMENT	4
I. THE OPPORTUNITY FOR A SOUND BASIC EDUCATION INCLUDES ADEQUATE PREPARATION FOR CIVIC PARTICIPATION.....	4
A. The Right to the Opportunity for a Sound Basic Education Requires Adequate Civic Preparation as Well as Adequate Funding	4
1. The Education Article is Not Limited to Adequate Funding ...	5
2. A Lack of Preparation for Civic Participation Constitutes a Violation of the Education Article	7
II. CIVIC PREPARATION REQUIRES DIVERSE SCHOOL SETTINGS	12
A. The Basic Purpose of “Common Schools” Is to Prepare Students from Diverse Backgrounds for Civic Participation	12
B. Plaintiffs Have Alleged That Defendants Have Failed to Adequately Diversify the Student Populations in New York City’s Schools and They Should Be Permitted to Present Evidence on the Feasibility of Rectifying this Constitutional Violation	17
1. Plaintiffs Have Alleged a Substantial Lack of Diversity in the New York City Public Schools	17
2. Plaintiffs Should Be Permitted to Present Evidence at Trial on the Feasibility of Rectifying this Constitutional Violation	20
III. CONCLUSION.....	26

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Aristy-Farer v. State</i> , 29 N.Y.3d 501 (N.Y. 2017).....	5
<i>Brown v. Board of Education</i> , 347 U.S. 483 (1954)	14
<i>Campaign for Fiscal Equity v. State</i> , 100 N.Y.2d 893 (2003)	Passim
<i>Campaign for Fiscal Equity, Inc. v. State</i> , 86 N.Y.2d 307 (1995).....	8, 9
<i>Campaign for Fiscal Equity v. State</i> , 295 A.D.2d 1 (1st Dept. 2002)	11
<i>Campaign for Fiscal Equity v. State</i> , 719 N.Y.S.2d 475 (N.Y. Sup. Ct. 2001) .	10, 11
<i>Cruz-Guzman v. State</i> , 998 N.W.2d 262 (Minn. 2023).....	25
<i>Grutter v. Bollinger</i> , 539 U.S. 306 (2003).....	23
<i>IntegrateNYC, Inc. v. State</i> , 228 A.D.3d 152 (1st Dept. 2024).....	12, 16
<i>Latino Action Network v. State</i> , No. L-1076-18 (N.J. Super. Ct. Law Div. 2023) .	25
<i>Maisto v. State</i> , 149 N.Y.S.3d 599 (N.Y. App. Div. 3d Dept. 2021).....	5
<i>New York Civil Liberties Union v. State</i> , 4 N.Y.3d 175 (2005).....	6
<i>Parents Involved in Community Schools v. Seattle Community School District No.1</i> , 551 U.S. 701 (2007).....	25
<i>Paynter v. State</i> , 100 N.Y.2d 434 (2003).....	5, 6
State Constitutions	
New York State Constitution Art. XI, § 1	Passim

Or. Const. Art. VIII, § 8	6
Federal Regulations	
34 C.F.R. §106.34 (2020).....	23
Other Authorities	
C. Fancsali & C. Farley, <i>What Percentage of NYC’s Students with Disabilities are Served in Inclusive Settings? Exploring Equity and Changes Over Time</i> , RESEARCH ALLIANCE FOR NEW YORK CITY SCHOOLS (2018)	19
Carl Campanile, <i>Fewer NYC High School Students Identify as Heterosexual Than Ever Before</i> , N.Y. POST (Feb. 26, 2019, 2:18 PM)	18
CARL KAESTLE, <i>PILLARS OF THE REPUBLIC: COMMON SCHOOLS AND AMERICAN SOCIETY, 1780-1860</i> (1983)	7
CHARLES Z. LINCOLN, <i>3 THE CONSTITUTIONAL HISTORY OF NEW YORK</i> (1906)	8
<i>Civic Readiness Initiative</i> , NEW YORK STATE EDUCATION DEPARTMENT (accessed Feb. 24, 2025)	16
DANIELLE ALLEN, <i>EDUCATION AND EQUALITY</i> (2016)	14
DANIELLE ALLEN, <i>TALKING TO STRANGERS: ANXIETIES OF CITIZENSHIP SINCE BROWN V. BOARD OF EDUCATION</i> (2004)	14
Deborah Son Holoien, <i>Do Differences Make a Difference? The Effects of Diversity on Learning, Intergroup Outcomes, and Civic Engagement</i> , TRUSTEE AD HOC COMM. ON DIVERSITY, PRINCETON UNIV. (2011)	15

DIANA E. HESS, CONTROVERSY IN THE CLASSROOM: THE DEMOCRATIC POWER OF DISCUSSION (2009)	14
<i>Diversity in Admissions</i> , NYC PUBLIC SCHOOLS (accessed Feb. 24, 2025)	23
<i>DOE Data at a Glance</i> , N.Y. CITY DEP’T OF EDUCATION (accessed Feb. 24, 2025).....	18
Doug D. Ready & Jeanne L. Reid, <i>Segregating Gotham’s Youngest: Racial/Ethnic Sorting and the Choice Architecture of New York City’s Pre-K for All</i> , Annenberg EDEXCHANGE: EDWORKINGPAPERS (Apr.2022).....	23
EMILY ZACKIN, LOOKING FOR RIGHTS IN ALL THE WRONG PLACES: WHY STATE CONSTITUTIONS CONTAIN AMERICA’S POSITIVE RIGHTS (2013)	17
<i>Enroll Grade by Grade</i> , NYC PUBLIC SCHOOLS (accessed Feb. 24, 2025)	20
<i>Equity and Excellence for All: Diversity in New York City Public Schools</i> , N.Y. CITY DEP’T OF EDUCATION (2017)	22
Helen Hershkoff, <i>Positive Rights and State Constitutions: The Limits of Federal Rationality Review</i> , 112 HARV. L. REV. 1131 (1999).....	17
HORACE MANN, LECTURES ON EDUCATION (1845)	11
Joshua Feinman, <i>High Stakes, but Low Validity? A Case Study of Standardized Tests and Admissions into New York City Specialized High Schools</i> , BOULDER & TEMPE: EDUC. & PUB. INT. CTR. & EDUC. POL’Y RSCH UNIT (Oct. 2018)	24

LAWRENCE A. CREMIN, <i>AMERICAN EDUCATION: THE NATIONAL EXPERIENCE, 1783-1876</i> (1980)	13
<i>Making the Grade: The Path to Real Integration and Equity for NYC Public School Students</i> , SCHOOL DIVERSITY ADVISORY GROUP (Feb. 2019)	22
<i>Middle School Concentration: Some Schools Had a Large Share of Students from Lower-Income & Education, High-Crime Neighborhoods</i> , N.Y. CITY INDEPENDENT BUDGET OFFICE (Aug. 2018)	19
Nicole Mader et al., <i>The Paradox of Choice: How School Choice Divides New York City Elementary Schools</i> , CENTER FOR NEW YORK CITY AFFAIRS (May 2018)	21
Rebecca J. Shmoys et al., <i>Constrained Agency and the Architecture of Educational Choice: Evidence from New York City</i> , ANNENBERG ED EXCHANGE: ED WORKING PAPERS (Mar. 2024)	22
STEPHEN MACEDO, <i>DIVERSITY AND DISTRUST: CIVIC EDUCATION IN A MULTICULTURAL DEMOCRACY</i> (2000)	14

INTEREST OF AMICI CURIAE

The Center for Educational Equity (“the Equity Center”) is a nonprofit research and policy center at Teachers College, Columbia University that supports the right of all children to meaningful educational opportunities. The Equity Center 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 students from marginalized backgrounds. The Equity Center 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 state, national and international levels.

The Equity Center also maintains an active website that provides current information on the status of education finance and education adequacy litigations and policy developments in all 50 states. This website, www.schoolfunding.info, is considered the leading national source of accurate, current information on these litigations by scholars, policy makers, litigators and the media. Michael A. Rebell, the Executive Director of the Equity Center, was co-counsel for the plaintiffs in the *Campaign for Fiscal Equity* litigation, before assuming his present positions at the

Center and as Professor of Practice in Educational Law and Policy at Teachers College.

The Equity Center also has undertaken substantial research and policy analysis regarding civic preparation and civic education. It convenes DemocracyReady NY, a state- wide coalition of education and civic organizations that develops position papers on important issues regarding civic education and works to promote effective civic education throughout New York State. Mr. Rebell has authored *Flunking Democracy: Schools, Courts and Civic Preparation* (2018), chaired the New York State Regents Task Force on Civic Readiness and represented plaintiffs in major civic education litigations in Rhode Island and Kentucky.¹

PRELIMINARY STATEMENT

All of this Court’s prior decisions emphasize, consistent with the text of Art. XI § 1, (“the Education Article”) and its constitutional history, that preparing students for civic participation is at the core of the constitutional requirement for providing students the opportunity for a “sound basic education.” Although adequate funding is a necessary prerequisite for preparing students for capable citizenship, ensuring civic preparation and not merely providing the schools with adequate funding is the essence of the constitutional mandate. This case does not

¹ The positions set forth in this brief represent the views of the Center for Educational Equity, but they do not necessarily represent the views of the Trustees, Officers and other members of the faculty at Teachers College, Columbia University.

call upon the Court to determine the full contours of “sound basic education,” but it does foursquarely call upon the Court to focus on the meaning of “civic preparation” and to determine whether allegations of a denial of that essential function constitutes a valid constitutional claim, whether or not adequate funding is at issue in this or other cases.

Schools enable students to encounter individuals from differing backgrounds and to build relationships across differences of race, religion, socio-economic status, gender, sexual orientation, and disability status. Ensuring that the student populations in the public schools are as diverse as is reasonably feasible is an important aspect of the Defendants’ constitutional obligation to prepare all students to function productively as civic participants. Acquiring the ability to have respectful interactions and conversations with individuals from differing backgrounds and who hold different opinions are attributes essential to the functioning of democracy. Schools provide a unique venue in our highly polarized society where such encounters can be encouraged and experienced.

Amicus believe that practical, feasible methods exist for maximizing the diversity of the student populations in the New York City Public Schools. We will describe in this brief one example of how the City’s existing school admission selection system could be modified with minimal administrative effort and little or no cost to accomplish this end. *Amicus* request, therefore, that his case be remanded

for a trial that, *inter alia*, will allow the Plaintiffs and other interested parties to demonstrate the feasibility of this or other potential reforms that would substantially enhance the diversity and civic preparation in the New York City Public Schools.

ARGUMENT

THE OPPORTUNITY FOR A SOUND BASIC EDUCATION INCLUDES ADEQUATE PREPARATION FOR CIVIC PARTICIPATION

Resolution of the Education Article claims in this case requires consideration of three basic issues: First, does the right to the opportunity for a sound basic education encompass more than adequate funding? Second, if the right encompasses more than adequate funding, what other aspects of education does it include? Third, have the Plaintiffs in this case alleged educational harms that are cognizable under the Education Article?

Amicus submit that students' right to the opportunity for a sound basic education is not limited to issues of adequate funding, that the right encompasses those aspects of education that are necessary to prepare students to function productively as civic participants, and that Plaintiffs' allegations in this case do properly claim a denial of that right.

I. THE RIGHT TO THE OPPORTUNITY FOR A SOUND BASIC EDUCATION REQUIRES ADEQUATE CIVIC PREPARATION AS WELL AS ADEQUATE FUNDING

A. The Education Article is Not Limited to Adequate Funding

The Appellants argue that a sound basic education claim must be “attributable to inadequate State funding,” N.Y.C. Br. at 28; *see also* N.Y.S. Br. at 27 (“This Court has recognized Education Article claims solely in the limited context of school funding.”) But this Court has never issued any such holding. On the contrary, the Court has clearly stated on repeated occasions that “[o]ur *CFE* and other Education Article decisions do not ‘delineate the contours of all possible Education Article claims.’” *Aristy-Farer v. State*, 29 N.Y.3d 501, 511 (N.Y. 2017) (quoting *Paynter v. State*, 100 N.Y.2d 434, 441 (2003)).

Certainly, most of the Education Article claims that the New York courts considered in the extensive *CFE* litigations and the numerous rulings that culminated in *Maisto v. State*, 149 N.Y.S.3d 599 (N.Y. App. Div. 3d Dept. 2021), have focused on the question of whether the lack of adequate funding was denying students the opportunity for a sound basic education. *See, e.g., Aristy-Farer v. State*, 29 N.Y.3d 501 (2017). But the fact that the plaintiffs in most of the initial cases brought to enforce Art. XI sought to obtain greater funding does not mean that the constitutional right to a sound basic education does not encompass educational needs other than adequate funding, and no court has so held.

This Court has denied Education Article claims in two cases, but the Court’s concern was not that those plaintiffs failed to allege funding issues; rather, the

Court determined in *Paynter* that the Constitution does not require school district boundaries to be re-drawn in order to ameliorate deficient student performance, *Paynter*, 100 N.Y.2d at 441, and it ruled in *New York Civil Liberties Union v. State*, 4 N.Y.3d 175, 182 (2005) that the Education Article applies only to systemic, district-level educational deficiencies, but not to problems occurring at the individual school level. Aside from these two discrete types of issues, this Court has not previously been asked to consider whether the right to the opportunity for a sound basic education entails more than adequate funding.

Art. XI, § 1 of the New York State Constitution provides:

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.

Nothing in the text of this constitutional provision limits the Legislature's responsibility to "educate[]" all of the children of this state to school funding issues. Although sufficient funding is, of course, necessary for an adequate education, the constitutional text encompasses more than a requirement for adequate funding, since it emphasizes the Legislature's responsibility for ensuring the perpetuation of a "system of free common schools" so that "all the children of th[e] state may be educated."²

² By way of contrast, language in the education provisions of some other states does specifically emphasize funding rather than the substance of education. *See, e.g.*, Or. Const. Art. VIII, § 8 ("Adequate and Equitable Funding. (1) The Legislative Assembly shall appropriate in each biennium a sum of money sufficient to ensure that the state's system of public education meets quality goals

A “system of free common schools” actually already existed in 1894 when the present constitution was adopted, and by that time, “[c]ommon-school supporters [had] worked the bugs out of some reforms, like formulas for tax support.” CARL KAESTLE, *PILLARS OF THE REPUBLIC: COMMON SCHOOLS AND AMERICAN SOCIETY, 1780-1860* 219 (1983). The framers of New York State’s 1894 Constitution were concerned primarily with expanding that system and ensuring its permanence so that all students in the state would receive an adequate education that would prepare them to meet the state’s contemporary and future needs. The framers’ primary interest was not in ensuring adequate funding, which largely had been achieved by the late nineteenth century, but rather in bolstering and sustaining “the American faith in education and the cosmopolitan ideal of inclusive public schools,” *id.* at 222, at a time of rapid industrialization and an increasing influx of immigrants from diverse lands.

B. A Lack of Preparation for Civic Participation Constitutes a Violation of the Education Article

The text of Art. XI § 1, its constitutional history and this Court’s repeated emphases on preparing students for civic participation as the essence of a “sound basic education” all demonstrate that although adequate funding is a necessary prerequisite for preparing students for capable citizenship, the latter and not the

established by law, and publish a report that either demonstrates the appropriation is sufficient, or identifies the reasons for the insufficiency, its extent, and its impact on the ability of the state’s system of public education to meet those goals.”)

former is the core connotation of “sound basic education.” Although this case does not call upon the Court to determine the full contours of “sound basic education,” it does foursquarely call upon the Court to focus on the meaning of “civic participation,” and to determine whether allegations of a denial of preparation for that essential function constitute a valid constitutional claim, whether or not adequate funding is at issue.

The report of the education committee that drafted the Art. XI language that has remained unchanged to this day made clear that its main purpose was to “declar[e] in the strongest possible terms the interest of the state in its common schools.” CHARLES Z. LINCOLN, 3 THE CONSTITUTIONAL HISTORY OF NEW YORK 555 (1906). The committee further stated that:

Whatever may have been their value heretofore . . . [the] importance [of the common schools] for the future cannot be overestimated. The public problems confronting the rising generation will demand accurate knowledge and the highest development of reasoning power more than ever before

Id.; see also *Campaign for Fiscal Equity, Inc. v. State* (“CFE II”), 100 N.Y.2d 893, 905 (2003) (citing this quotation from the committee report for the proposition that “meaningful civic participation . . . has been at the core of the Education Article since its enactment in 1894.”)

The importance of civic preparation was a major theme throughout the course of the lengthy *CFE* litigation. In *Campaign for Fiscal Equity v. State*

(“*CFE I*”), 86 N.Y.2d 307 (1995), this Court noted that among the cognizable allegations in the complaint were claims that “New York City students are not receiving the opportunity to obtain an education that enables them to . . . be knowledgeable about political, economic and social institutions and procedures in this country and abroad, or to acquire the skills, knowledge, understanding and attitudes necessary to participate in democratic self-government.” *Id.* at 318–19.

In *CFE I*, the Court undertook an initial explication of the term “sound basic education” and held that “[t]he State must assure that some essentials are provided.” *Id.* at 317. These “essentials” were described, not in terms of funding levels, but in terms of substantive educational resources such as adequate physical facilities, instrumentalities of learning, up-to-date curricula and sufficient numbers of adequately trained teachers. *Id.*

The Court also set forth as part of this preliminary definition a “template” for the trial court to consider in creating a record that would allow this Court “to definitively specify what the constitutional concept and mandate of a sound basic education entails.” *Id.* The template charged the trial court with determining whether children in New York City were being provided the opportunity to obtain “skills necessary to enable them to function as *civic participants capable of voting and serving as jurors.*” *Id.* at 318 (emphasis added).

The trial court, in applying the *CFE I* template, stated that “[t]he Court of Appeals invoked voting and jury service as synecdoches for the larger concept of productive citizenship Productive citizenship means more than just being *qualified* to vote or serve as a juror, but to do so capably and knowledgeably. It connotes civic engagement” and “contribution in the economy as well as in public life.” *Campaign for Fiscal Equity v. State*, 719 N.Y.S.2d 475, 485 (N.Y. Sup. Ct. 2001).

This Court affirmed that interpretation in *CFE II*:

The trial court . . . concluded that productive citizenship “means more than just being *qualified* to vote or serve as a juror, but to do so capably and knowledgeably”—to have skills appropriate to the task. We agree with the trial court that students require more than an eighth-grade education to function productively as citizens, and that the mandate of the Education Article for a sound basic education should not be pegged to the eighth or ninth grade, or indeed to any particular grade level. In *CFE [I]* we pointed to voting and jury service because they are the civic responsibilities *par excellence*.

100 N.Y.2d at 906–07 (internal citation omitted).³ The Court also emphasized the overriding importance of the goal of preparing students for civic participation,

³ The Court’s emphasis on preparing students to be capable voters and jurors reflected the view of Horace Mann, the founder of the Common Schools movement, on the goal of public education:

With us, the qualification of voters is as important as the qualification of governors 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. . . . Education must prepare our citizens to become municipal officers, intelligent jurors, honest witnesses, legislators, or competent judges of legislation,—in fine, to fill all the manifold relations of life.

stating that “[t]his purposive orientation [*i.e.*, “civic participation”] for schooling has been at the core of the Education Article since its enactment in 1894.” *Id.* at 905.

In *CFE II*, this Court affirmed the trial court’s opinion, and implicitly acknowledged that the post-trial definition of a sound basic education was more robust than the definitional language it had used in *CFE I* by adding the term “meaningful” to the civic participation language of the initial template. Thus, the final definition of the constitutional language that this Court proclaimed in *CFE II* was that the Education Article requires the schools to provide students “the opportunity for a *meaningful* high school education, one which prepares them to function productively as civic participants.” *Id.* at 908 (emphasis added).⁴

HORACE MANN, LECTURES ON EDUCATION 55–56 (1845).

⁴ The trial court in applying the template definition of sound basic education to the extensive evidence submitted during a seven-month long trial also held that seven types of inputs were “essential” for providing all students the opportunity for a sound basic education. The essential inputs were: (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; and (7) a safe orderly environment. 719 N.Y.S.2d at 550.

The Appellate Division agreed that this more robust statement of the essential resources needed for the opportunity for a sound basic education “essentially fall within the three areas [of ‘essentials’] set forth by the Court of Appeals,” *Campaign for Fiscal Equity v. State*, 295 A.D.2d 1, 10 (1st Dept. 2002), and this enhanced understanding was also implicitly accepted by this Court in affirming the decision of the Appellate Division “as . . . modified.” *CFE II*, 100 N.Y.2d at 932.

Accordingly, the Appellate Division in this case was correct in holding that:

Contrary to the City’s argument, *CFE II* did not define a “meaningful” education by incorporating the Court’s earlier definition in *CFE I* which was tied solely to basic

The appellants themselves have acknowledged that civic preparation is the central purpose of a sound basic education:

This Court has always analyzed the scope of the constitutional right to a “sound basic education” by looking to . . . “meet a practical goal: [enabling] meaningful civic participation in contemporary society” through voting, serving on a jury, and finding a job. *CFE II*, 100 N.Y.2d at 903, 905-08; *see also Aristy-Farer*, at 505, 514–16.

NYC Br. at 32–33.

If the core purpose and guarantee of the Education Article is civic preparation, it follows that a claim that students are not receiving adequate civic preparation must be a cognizable injury for which the claimants are entitled to present evidence at trial and obtain relief if the evidence supports their claim. Such a claim would be valid whether or not the cause of the violation involves inadequate funding.

II. CIVIC PREPARATION REQUIRES DIVERSE SCHOOL SETTINGS

A. The Basic Purpose of “Common Schools” Is to Prepare Students from Diverse Backgrounds for Civic Participation

literacy, calculating, and verbal skills. Rather, *CFE II* expanded the definition of a sound basic education and contemplated that the requisite skills for *meaningful civic participation might involve more than basic academic skills* (which are skills tied to traditional inputs).

IntegrateNYC v. State, 228 A.D.3d 152, 164 (1st Dept. 2024) (internal citations omitted) (emphasis added).

As noted above, the constitutional text that requires the state to provide students the opportunity for a “sound basic education” requires the legislature to establish and maintain “a system of free *common schools*.” N.Y. Const. Art. XI § 1 (emphasis added). The nineteenth-century common school movement that informed this language was an attempt to educate in one setting all the children living in a particular geographic area, whatever their class, religious, or ethnic background. For Horace Mann, the founder of the movement, “common” meant a school “common to all people”:

It would be open to all and supported by tax funds. It would be for rich and poor alike And, by receiving children of all creeds, classes and backgrounds [i]t would kindle a spirit of amity and mutual respect that the conflicts of adult life could never destroy. In consonance with the republican style, he saw social harmony as a prime goal of popular education.

LAWRENCE A. CREMIN, *AMERICAN EDUCATION: THE NATIONAL EXPERIENCE, 1783–1876*, at 138 (1980).

These common schools replaced the prior patchwork of town schools partially supported by parental contributions, church schools, “pauper schools,” and private schools with a new form of systematic, statewide democratic schooling. Their mission was to forge a common democratic culture from the diverse strands of the country’s rapidly increasing population:

The ethnic and religious diversity that increasingly characterized American cities in the second quarter of the nineteenth century contributed powerfully to calls for an

institution that could inculcate a common culture, the English language, and republican sensibilities by educating the children of different faiths and classes in one institution dedicated to forging a shared citizenship.

STEPHEN MACEDO, DIVERSITY AND DISTRUST: CIVIC EDUCATION IN A MULTICULTURAL DEMOCRACY 63 (2000).⁵

Schools enable students to encounter individuals from differing backgrounds and to build “bridging” and “bonding” relationships across differences of race, religion, socio-economic status, et cetera that allow them to understand, respect and trust individuals coming from differing cultures, upbringings, and experiences. *See, e.g.*, DANIELLE ALLEN, EDUCATION AND EQUALITY 41–42 (2016) (discussing the importance of bonding and bridging skills for citizens to function effectively in a democratic society); DANIELLE ALLEN, TALKING TO STRANGERS: ANXIETIES OF CITIZENSHIP SINCE BROWN V. BOARD OF EDUCATION 47–48 (2004) (discussing the importance of public schools in building trust, respect and tolerance among people of differing backgrounds). Schools also instruct students in how to engage in respectful discussions—even on controversial issues—with individuals holding different opinions. *See, e.g.*, DIANA E. HESS, CONTROVERSY IN THE CLASSROOM: THE DEMOCRATIC POWER OF DISCUSSION (2009).

⁵ Of course, in the nineteenth and much of the twentieth century, many public schools excluded African American students and students of other racial backgrounds. *Brown v. Board of Education*, 347 U.S. 483 (1954) and subsequent civil rights laws have made clear that the “inclusivity” of America’s public schools must truly be all-encompassing.

These attributes are essential to the functioning of democracy which is by definition a system for forging a governing consensus from diverse groups of people. Building an enduring consensus depends on the ability of people with different views and interests to deliberate with each other civilly and to experience enough trust that they will accept decisions and outcomes with which they personally disagree. Positive experiences with diversity are therefore an essential component of the civic preparation that is a required focus of a sound basic education

In short, schools are the prime locale for building in young people at the formative ages in their lives the understanding and experiences that are necessary for them to function productively as civic participants who can sustain a democratic culture in our increasingly diverse society. Diverse schooling experiences also demonstrably promote greater learning, better intergroup attitudes and behavior, and more extensive civic engagement. *See, e.g.,* Deborah Son Holoien, *Do Differences Make a Difference? The Effects of Diversity on Learning, Intergroup Outcomes, and Civic Engagement*, TRUSTEE AD HOC COMM. ON DIVERSITY, PRINCETON UNIV. (2011), <https://inclusive.princeton.edu/sites/g/files/toruqf7151/files/pu-report-diversity-outcomes.pdf>.

As the Court below noted, both the State and City appellants themselves have acknowledged the importance of encouraging diversity, equity, and inclusion in the New York City's schools. 228 A.D.3d at 164–165, n. 10. The state’s definition of civic readiness emphasizes the importance of “[e]mpathy, compassion, and respect for the views of people with other opinions and perspectives,” and “[d]emonstrat[ing] respect for the rights of others in discussions and classroom debates, and how to respectfully disagree with other viewpoints and provide evidence for a counterargument.” *Civic Readiness Initiative*, NEW YORK STATE EDUCATION DEPARTMENT , <https://www.nysed.gov/standards-instruction/civic-readiness-initiative> (accessed Feb. 24, 2025).

Today, the diversity in New York City’s population dwarfs the cultural differences experienced by students in the nineteenth-century. The City is made up not only of children from different races, religions and socio-economic backgrounds, but also children with a range of differences in regard to gender, sexual orientation, linguistic ability, and intellectual and physical disabilities. “The purposive orientation for schooling [that] has been at the core of the Education Article since its enactment in 1894,” that is, “to meet [the] practical goal [of] meaningful civic participation in contemporary society,” *CFE II*, 100 N.Y.2d at 905, requires that schools emphasize positive experiences among students of diverse backgrounds more than ever before. Defendants have an affirmative

constitutional obligation to provide students meaningful opportunities for civic preparation, *see, e.g.*, EMILY ZACKIN, LOOKING FOR RIGHTS IN ALL THE WRONG PLACES: WHY STATE CONSTITUTIONS CONTAIN AMERICA’S POSITIVE RIGHTS chs. 3, 5 (2013); Helen Hershkoff, *Positive Rights and State Constitutions: The Limits of Federal Rationality Review*, 112 HARV. L. REV. 1131, 1137 (1999) (“When the state constitution mandates a specific purpose and thus authorizes the government to carry out the stated goal, the legislature and the governor have a duty to achieve, or at least to help promote, the constitutional mandate.”) As demonstrated above, ensuring that the student populations in the public schools are as diverse as is reasonably feasible is an important aspect of the Defendants’ constitutional obligation to prepare all students to function productively as civic participants.

B. Plaintiffs Have Alleged That Defendants Have Failed to Adequately Diversify the Student Populations in New York City’s Schools and They Should Be Permitted to Present Evidence on the Feasibility of Rectifying this Constitutional Violation

1. Plaintiffs Have Alleged a Substantial Lack of Diversity in the New York City Public Schools

Plaintiffs in this case extoll the benefits of “diverse classrooms,’ in whichlearning across difference takes place,” R. 15, and they have alleged that the Defendants have failed to make reasonable efforts to diversify the student population in most of New York City’s public schools. For example, Plaintiffs

allege that students are segregated by race, ethnicity and socioeconomic status in certain pre-school and early education programs, R. at 21-22, 43-44, 49-52, in screened middle and high schools, R. at 22-24, 45-46, and in the elite specialized schools, R. at 25-26. They also allege that because of these facts, New York City's educational system "cannot prepare its students for meaningful democratic and economic participation in today's diverse society." R. at 14-15.

Plaintiffs emphasize the need for racial integration, but the sound basic education to which they and all other students in New York City are entitled encompasses more than racial integration: All students are entitled to diverse school settings that can fully prepare them for civic participation. Such "civic diversity" should encompass all of the major differences among students based on race, religion, national origin, gender, sexual orientation, disability, and socioeconomic status. The current population of New York City's Public Schools reflects significant diversity in all seven of these areas. In 2023-2024 their student population consisted of 42% Hispanic, 19.5% Black, 19% Asian and 16% percent White students. In addition, 16% of the city's students were English Language Learners, 22% percent were students with disabilities, and 74% percent were at various levels of economic disadvantage, *DOE Data at a Glance*, N.Y. CITY DEP'T OF EDUCATION, <https://www.schools.nyc.gov/about-us/reports/doe-data-at-a-glance>, (accessed Feb. 24, 2025); and 11% self-identified as gay or bisexual, Carl

Campanile, *Fewer NYC High School Students Identify as Heterosexual Than Ever Before*, N.Y. POST (Feb. 26, 2019, 2:18 PM), <https://nypost.com/2018/12/24/fewer-nyc-high-school-students-identify-as-heterosexual-than-ever-before/>.

Plaintiffs allege that nearly 75% of Black and Latino/a students attended schools with less than 10% of White students, whereas over 34% of White students attended schools with majority White populations, although only 15% of students were White. R. at 18–19. There are also disproportionate percentages of students from poverty backgrounds, English language learners, students with disabilities and possibly of students with differing sexual orientations in many of the city’s schools. See, e.g., *Middle School Concentration: Some Schools Had a Large Share of Students from Lower-Income & Education, High-Crime Neighborhoods*, N.Y. CITY INDEPENDENT BUDGET OFFICE (Aug. 2018), <https://ibo.nyc.ny.us/iboreports/middle-school-concentration-some-schools-had-a-large-share-of-students-from-lower-income-education-high-crime-neighborhoods-august-2018.pdf> (finding that more than half of the city’s students who came from neighborhoods with low socioeconomic status were concentrated in just twenty-five percent of the city’s public middle schools); C. Fancsali & C. Farley, *What Percentage of NYC’s Students with Disabilities are Served in Inclusive Settings? Exploring Equity and Changes Over Time*, RESEARCH ALLIANCE FOR NEW YORK CITY SCHOOLS (2018), <https://steinhardt.nyu.edu/research->

alliance/research/spotlight-nyc-schools/what-percentage-nycs-students-disabilities-are.

2. Plaintiffs Should Be Permitted to Present Evidence at Trial on the Feasibility of Rectifying this Constitutional Violation

The New York City Department of Education has established a computerized system for assigning students to schools in accordance with their stated preferences. This system was established for other purposes, but it could relatively easily be modified to promote substantial diversity throughout the city's schools. *Enroll Grade by Grade*, NYC PUBLIC SCHOOLS, <https://www.schools.nyc.gov/enrollment/enroll-grade-by-grade> (accessed Feb. 24, 2025). Under this system, parents and students are able to apply to any school in the city, regardless of their residential address. All families are required to participate—no students are guaranteed a spot in any school, even their zoned school—and many schools receive more applications than they have available seats.

Under this system, all students planning to attend public pre-K, kindergarten and middle and high schools must list up to twelve schools in order of preference. The system then uses this information to assign students to specific schools and programs by a matching process that is designed to give each applicant an offer to their most preferred school choice possible. If there are no more spots in a student's first-choice school, they will be considered for their second-choice

school, and so on. Some schools have priorities that determine which students are admitted when the school receives more applications than there are available seats. For example, schools often give priority to students with siblings at the school or to students applying from the local neighborhood or community school district. Especially at the middle and high school levels, some schools are also permitted to “screen” students by imposing admission requirements with regard to academic performance or other specific criteria.

This system as currently operated has not substantially reduced racial segregation or increased diversity in New York City’s schools. The basic problem is that the priorities established by the current system disadvantage traditionally underserved students because affluent students tend to apply to desirable schools in their neighborhoods or community school districts and often receive selection preferences for that choice, and screened schools tend to select out relatively lower-performing students even if they meet the schools’ threshold admission requirements. Moreover, many underserved families have difficulties navigating the complex choice system; if they submit a late application, they will be matched only to schools that have seats remaining after the initial round of offers have been made. See Nicole Mader et al., *The Paradox of Choice: How School Choice Divides New York City Elementary Schools*, CENTER FOR NEW YORK CITY AFFAIRS (May 2018), <https://www.centernyc.org/the-paradox-of-choice> (accessed Feb. 24,

2025); Rebecca J. Shmoys et al., *Constrained Agency and the Architecture of Educational Choice: Evidence from New York City*, ANNENBERG ED EXCHANGE: EDWORKINGPAPERS (Mar. 2024), <https://edworkingpapers.com/sites/default/files/ai24-922.pdf>.

These problems could be rectified, however, and the New York City school choice system could, in fact, fairly assign students to schools in a manner that would promote maximum diversity in all seven civic diversity categories. In fact, the New York City Public Schools have proclaimed maximizing diversity in all seven of the categories identified above (race, religion, national origin, gender, sexual orientation, disability, and socioeconomic status) in all public schools as a long-term goal of the system. *Equity and Excellence for All: Diversity in New York City Public Schools*, N.Y. CITY DEP'T OF EDUCATION (2017), <https://www.schools.nyc.gov/docs/default-source/default-document-library/diversity-in-new-york-city-public-schools-english.pdf>. In 2017, it appointed a School Diversity Advisory Group that included members of Plaintiff Integrate NYC to make recommendations on how this goal could be achieved. *Making the Grade: The Path to Real Integration and Equity for NYC Public School Students*, SCHOOL DIVERSITY ADVISORY GROUP (Feb. 2019), https://cdn.givingcompass.org/wp-content/uploads/2019/02/22123200/1c478c_4de7a85cae884c53a8d48750e0858172

.pdf. Although some limited diversity initiatives have been adopted in five of the city's 32 community school districts, *Diversity in Admissions*, NYC PUBLIC SCHOOLS., <https://www.schools.nyc.gov/enrollment/enrollment-help/meeting-student-needs/diversity-in-admissions> (accessed Feb. 24, 2025), over the past eight years, little progress has actually been made toward achieving diverse student populations in the city's more than 1,500 public schools.

Amici submit that a feasible plan for re-orienting the existing school choice student assignment plan could be adopted by the Defendants.⁶ Such a plan could, for example, continue to uphold preferences based on neighborhood schools or schools in the community school district, provided that these preferences are honored for the schooling option in which their own diversity category is least represented. This would mean that if a particular school has few students with disabilities or few students of a certain race, religion, national origin, gender,⁷ sexual or socioeconomic status, students of the underrepresented category would be the first selected for the available seats. Students would be asked to voluntarily declare their diversity category on their school selection application form. In a

⁶ Some scholarship has already demonstrated that correction of some aspects of the New York City school choice system could substantially promote increased diversity. *See, e.g.,* Doug D. Ready & Jeanne L. Reid, *Segregating Gotham's Youngest: Racial/Ethnic Sorting and the Choice Architecture of New York City's Pre-K for All*, ANNENBERG ED EXCHANGE: EDWORKINGPAPERS (Apr. 2022), https://edworkingpapers.com/sites/default/files/NYC%20PreK%20Segregation%20Ready%20Reid_1.pdf (simulation of reforms to NYC pre-K student assignment system that increased inter-site diversity).

⁷ Single sex schools or programs may be permitted in certain circumstances if separate but equal educational opportunities are provided to students from the excluded sex. *See* 34 C.F.R. §106.34 (2020).

computerized student assignment system, factoring the seven diversity criteria into the selection process would be a relatively simple adjustment.

Schools could still adopt screening requirements based on grades or other such selection criteria, but again, preference among all those who meet such criteria would be given to individuals from diversity categories that are underrepresented in that particular school. The City's current practice of admitting students in precise rank order in schools with competitive admission requirements arguably may be rejecting many students who "have scores that are statistically indistinguishable from thousands who are granted admission." Joshua Feinman, *High Stakes, but Low Validity? A Case Study of Standardized Tests and Admissions into New York City Specialized High Schools*, BOULDER & TEMPE: EDUC. & PUB. INT. CTR. & EDUC. POL'Y RSCH UNIT 19–20 (Oct. 2018), https://nepc.colorado.edu/sites/default/files/pb-feinman-nyc-test_final.pdf. An alternative approach that the Court might consider if the evidence at trial substantiates this finding would be to identify a threshold that reliably indicated qualification for entry to the competitive high schools and then admit students exceeding that threshold on the basis of a scheme that considered student preferences and the seven diversity characteristics. This would preserve the City's interest in ensuring admission of only qualified students while promoting the constitutional interest in civic diversity.

In describing a feasible plan for promoting diversity in the New York City Public Schools, *amici* do not, of course, aim to predetermine or preclude alternative or more appropriate remedies that might be developed as part of a full remedy after trial. Our purpose is merely to demonstrate that judicially manageable approaches for promoting civic preparation are available and can be developed by the trial court or by the Defendants themselves following a declaratory judgment that the Plaintiffs have been denied the opportunity for a sound basic education.

An admission policy that seeks to reasonably approximate the diverse mix of students in the student population at large is clearly distinguishable from the plans the U.S. Supreme Court struck down in *Parents Involved in Community Schools v. Seattle Community School District No. 1*, 551 U.S. 701 (2007).⁸ It does not aim

⁸ In *Parents Involved*, the U.S. Supreme Court struck down two choice-based school assignment plans that identified and potentially stigmatized individual students who were denied admission to preferred schools on the basis of their race. That precedent would not apply to the diversity plan being proposed here since a complex New York City plan, based on 12 stated preferences by each student and seven diversity categories, would not identify any students as having been rejected for a preferred school on the basis of their race (or any other single factor).

A plurality of the *Parents Involved* Court, in an opinion written by Chief Justice Roberts, held that there was no compelling state interest in attempting to achieve racial balance in the schools, but even this position would not preclude a broad-based diversity plan required by a positive right mandated by a state constitution provision that is intended to promote civic participation, rather than racial balance. The Chief Justice specifically stated, in rejecting the numerical goals in the high school admission policies at issue in *Parents Involved*, that “In the present cases . . . race is not considered part of a broader effort to achieve ‘exposure to widely diverse people, cultures, ideas, and viewpoints’” 551 U.S. at 723 (quoting *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003)).

We also note that courts in two states have held that an education adequacy clause in a state constitution bans racial imbalances where they are a substantial factor in causing an inadequate education, *Cruz-Guzman v. State*, 998 N.W.2d 262, 277 (Minn. 2023), and that the state constitution’s guarantee of a “thorough and efficient education” prohibits *de facto* racial segregation as well as inadequate funding, *Latino Action Network v. State*, No. L-1076-18 (N.J. Super. Ct. Law Div. 2023).

for “racial balance,” it treats all students similarly and fairly, and it is necessary to provide all students the opportunity for a sound basic education that will prepare them to function productively as civic participants in an increasingly diverse democratic society.⁹

CONCLUSION

For all the aforesaid reasons, *amicus curiae* respectfully requests that the Court issue a ruling declaring that claims of a denial of meaningful educational opportunities that prepare students to function as civic participants are cognizable under Art. XI § 1 of the New York State Constitution, affirm the decision of the Appellate Division denying the Defendants’ motion to dismiss and order this case to be remanded for a trial to determine, *inter alia*, whether the Defendants have denied the Plaintiffs an opportunity for a sound basic education and adequate civic preparation by not taking reasonable, feasible steps to allow them to attend schools with diverse student populations.

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE

I hereby certify pursuant to 22 NYCRR PART 500.13 © (1) that according to the word-processing system used to prepare this brief, the total number of words in this brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of citations, proof of service, certificate of compliance, is 6283 words.

Respectfully submitted,



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**AFFIDAVIT OF SERVICE
BY OVERNIGHT FEDERAL
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Sworn to before me on March 20, 2025

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