

No. 126212

IN THE
SUPREME COURT OF ILLINOIS

Cahokia Unit School District No. 187, et al.,

Plaintiffs-Appellants,

v.

J.B. Pritzker, Governor of the State of Illinois, et al.,

Defendants-Appellees.

Illinois Appellate Court, Fifth Judicial District
Case No. 5-18-0542
On Appeal from Circuit Court of St. Clair County, Illinois
Case No. 2017-CH-301
The Honorable Julie K. Katz, Judge Presiding

**BRIEF OF *AMICI CURIAE* EDUCATION LAW CENTER, CHICAGO LAWYERS'
COMMITTEE FOR CIVIL RIGHTS, BRIGHTON PARK NEIGHBORHOOD
COUNCIL, CHICAGO UNITED FOR EQUITY, ILLINOIS FAMILIES FOR
PUBLIC SCHOOLS, PARENTS 4 TEACHERS, AND RAISE YOUR HAND FOR
ILLINOIS PUBLIC EDUCATION IN SUPPORT OF PLAINTIFFS-APPELLANTS**

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INTEREST OF AMICI CURIAE

The Education Law Center (“ELC”) is a non-profit organization that advocates, on behalf of public school children, 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 plaintiff school children in the landmark case *Abbott by Abbott v. Burke*, 575 A.2d 359 (N.J. 1990), which presented a threshold justiciability issue similar to that presented by this case. The New Jersey Supreme Court held in *Abbott* that the plaintiffs’ claims were justiciable, and, following a ruling on the merits, ELC secured a series of remedial measures to ensure disadvantaged school children a constitutional education. ELC continues to advocate for effective implementation of the *Abbott* remedies, which the New Jersey Supreme Court recently found “enabled children in [urban] districts to show measurable educational improvement.” *Abbott ex rel. Abbott v. Burke*, 971 A.2d 989, 995 (N.J. 2009) (citation omitted).

In states across the nation, ELC also advances children’s opportunities to learn and assists those who promote such opportunities. ELC provides research and analyses related to education cost and fair school funding, high quality preschool, and other proven educational programs; assistance to parent and community organizations, school districts, and states in gaining the expertise needed to narrow and close achievement gaps for disadvantaged children; and support for litigation and other efforts to bridge resource gaps in the nation’s high-need schools. As part of its work, ELC has participated as *amicus curiae* in state educational opportunity cases in California, Colorado, Connecticut, Delaware, Indiana, Maryland, Pennsylvania, Oregon, South Carolina, and Texas.

The Chicago Lawyers' Committee for Civil Rights ("CLCCR") was founded in 1969 as a group of civil rights lawyers and advocates working to secure racial equity and economic opportunity for all. CLCCR's vision is to root out and dismantle deeply entrenched systems of discrimination, racism, and economic oppression by using the power of the law to give voice to those most impacted by these civil rights issues. CLCCR focuses on the continued civil rights battles in areas including education, housing, community economic development, voting rights, and other aspects of public life. Through its education practice, CLCCR protects and promotes access to education by addressing the individual and systemic barriers that disproportionately impact historically disadvantaged communities.

Brighton Park Neighborhood Council ("BPNC") is a community-based, nonprofit organization serving Brighton Park, a low-income, predominantly Latinx, and working class neighborhood on Chicago's southwest side. BPNC's mission is to create a safer community, improve the learning environment at public schools, preserve affordable housing, provide a voice for youth, protect immigrants' rights, promote gender equity, and end all forms of violence. Founded in 1997, BPNC unites individuals and neighborhood institutions to organize campaigns to win essential resources for one of Chicago's most underserved communities, improve public policy, and address the root causes of poverty and inequality. Over 83% of Brighton Park's residents are Latinx, 8% are white, 6% are Asian American, and 1% are African American. According to Chicago Public Schools, between 93% and 98% of the students in Brighton Park schools currently qualify for free or reduced-price lunches. BPNC works to address a range of community issues through school and community-based services and community organizing strategies that engage

community leaders in local, state, and federal policy change campaigns. BPNC's priority issues include the need for more resources for public schools, criminal justice reform and increased violence prevention resources, more resources for youth, rejuvenation of the community's parks and green spaces, homeless prevention and foreclosure prevention services, increased mental health resources and healthcare for all, and comprehensive immigration reform.

Chicago United for Equity ("CUE") is a community of racial justice advocates working together across neighborhoods, organizations, and policy issues to build a city where race does not determine the present or future. In working towards this vision, CUE's mission is to honor and amplify the civic power of everyday people. CUE connects and amplifies civic love to transform Chicago into a city that is responsive and accountable to communities of color. CUE's 2019 Vote Equity Project, which sought input from thousands of Chicagoans, identified the full and equitable funding of neighborhood public schools as the top priority for the city's future.

Illinois Families for Public Schools ("ILFPS") is a grassroots, non-profit 501(c)(4) advocacy group that represents the interests of Illinois public school families. ILFPS is the voice in Springfield for systemic policy change to defend and improve Illinois public schools. Its efforts are key to giving public education families a real, regular presence and influence in Springfield. ILFPS' vision is for every family in Illinois to have a well-resourced local public school—a school that is able to nurture and educate each and every child that comes in the door to take on the complexity of adulthood in a 21st century democratic society. To make this vision a reality, ILFPS organizes and mobilizes parents

and other public school supporters across Illinois to advocate for policy change. ILFPS reaches people in more than 100 Illinois House districts.

Parents 4 Teachers (“P4T”) is a grassroots parent advocacy organization that works to build unity between parents and teachers in the fight for equitable and quality public schools for all Chicago children. P4T believes that united parents and teachers are a powerful force for change. P4T supports social movement, teacher unionism, challenges racist school policies like closings and turnarounds, advocates for more equitable school funding policies that provide resources to schools based on actual needs, and fights for an elected school board to ensure that the Chicago school board is accountable to the people the schools serve.

Raise Your Hand for Illinois Public Education (“RYH”) is a grassroots parent led advocacy organization that engages, informs, and organizes parents around systemic issues in public education. RYH is one of the leading sources for independent parent voice in Chicago and Illinois, a watchdog for authentic community engagement, and a trusted convener of parents and community groups. RYH strives for Chicago and Illinois to view parents as change agents, leaders and experts in the fight for well-resourced public education for all families. Parents consistently demand school funding equity so all Illinois students can access the public education they deserve.

PRELIMINARY STATEMENT

Through this case, the Court can for the first time give weight and authority to the constitutional right to “an efficient system of high quality public educational institutions and services”—a right all Illinois citizens enjoy under Article 10, Section 1 of the Constitution of the State of Illinois (the “Quality Education Clause”). In so doing, the Court can correct its decision of nearly twenty-five years ago, when it determined that—based on

the circumstances as they existed at the time—whether Illinois’ students received a constitutionally-sufficient education was a non-justiciable question. *See Comm. for Educ. Rts. v. Edgar*, 174 Ill. 2d 1, 58 (1996). A constitutional right that is not backed by judicial authority is an empty promise, and that is exactly what the children of Illinois have experienced since this Court’s decision in *Edgar*.

This Court need not overrule *Edgar* in order to give life to the Quality Education Clause. Much has changed since 1996. At the time, there was no legislative guidance in place as to what constituted a “high quality education,” and accordingly, a court in Illinois could not determine whether or not citizens had been denied their constitutional right without first defining what that right entailed—something the *Edgar* Court held should be determined by the Illinois Legislature (the “Legislature”). *Id.* Since then, however, the Legislature and Illinois State Board of Education (“ISBE”) have enacted standards that define the quality of education that Illinois students must receive. With the new legislative guidance in place, this Court should join the majority of other state courts in determining that the adequacy of one’s education is a justiciable question.

The importance of a finding of justiciability cannot be overstated. Illinois has one of the most inequitable public education systems in the entire country. Generations of students born into high poverty Illinois school districts—many of whom are students of color—have received substandard educations due in large part to the State’s reliance on local property taxes to provide the majority of school funding. This has resulted in a continuous cycle of inequitable student outcomes largely based on race and class. While the State has attempted to equalize the level of education provided to Illinois students with new funding legislation, it is not living up to its funding promises, further undermining Illinois students’ constitutional rights to a high quality education. Illinois courts should not

sit by and let this happen. Now that the Legislature has enacted standards that can guide judicial decision-making, the courts must ensure that Illinois children have the ability to receive the education they are guaranteed.

ARGUMENT

I. PLAINTIFFS' EDUCATION ADEQUACY CLAIMS ARE JUSTICIABLE.

A. *The Illinois Legislature has Provided Manageable Standards to Adjudicate Plaintiffs' Claims Under the Constitution's Quality Education Clause.*

More than two decades ago, this Court determined that “[w]hat constitutes a ‘high quality’ education [under the Quality Education Clause of the Illinois’ Constitution], and how it may best be provided, cannot be ascertained by any judicially discoverable or manageable standards.” *Edgar*, 174 Ill. 2d at 28. At the time, neither the legislative nor executive branches of Illinois had established substantive education standards that defined a constitutional “high quality” education for Illinois school children. Accordingly, the Court held that “the exercise of legislative and administrative discretion,” *id.*, was necessary to define the “high quality” education that the “State shall provide” to all Illinois school children. ILL. CONST. art. 10, § 1.

But since 1996, the State has done just that. The Legislature and ISBE have enacted detailed and comprehensive academic standards applicable to all public school districts and children in Illinois, including the Plaintiff districts and their students. The ISBE first developed Illinois Learning Standards (“Learning Standards”) in 1997 as “required learning targets for Illinois students and schools.”¹ After the Legislature adopted Common

¹ Illinois Learning Standards, Illinois State Board of Education (July 25, 1997) available at <https://files.eric.ed.gov/fulltext/ED410667.pdf>.

Core Standards for math and English language arts (“ELA”) in 2010, the ISBE updated the related Learning Standards to match the Common Core requirements.² The Learning Standards outline the curriculum content and skills all Illinois students should know and be able to perform in all subjects at each grade level.³ The ISBE also developed and established an assessment regime—the Illinois Assessment for Readiness (“IAR”)—to measure whether students have mastered the academic content prescribed in the Learning Standards.⁴ Proficiency on the assessments is used to evaluate whether students are making academic progress towards graduation. The Learning Standards and assessment regime provide this Court what was not available in 1996: a substantive definition of a “high quality” education that can be applied to manage the constitutional claims in this litigation.

What is more, in 2017, the Legislature took the additional step of enacting a new school funding formula—the Evidence-Based Funding for Student Success Act (“EBF”)—which provides a detailed framework for calculating the amount of state funding required to ensure students’ constitutional rights are protected. 105 ILCS 5/18-8.15. The EBF’s express purpose is to ensure “the educational development of all persons to the limits of their capacities *in accordance with Section 1 of Article X of the Constitution of the State of Illinois.*” 105 ILCS 5/18-8.15(a)(1) (emphasis added). The EBF declares that, once districts are “fully funded under this [Act]”—a goal set for 2027—“every school shall have the resources, based on what the evidence indicates is needed, to [] . . . provide all students

² ISBE Division of Public Information, *Fact Sheet Illinois Learning Standards*, (Aug. 2015) available at <https://www.isbe.net/Documents/ils-facts-sy16.pdf>.

³ Illinois State Board of Education, *Illinois Learning Standards*, available at <https://www.isbe.net/Pages/Learning-Standards.aspx> (last visited on Nov. 24, 2020).

⁴ Illinois State Board of Education, *Illinois Assessment Of Readiness (IAR)*, available at <https://www.isbe.net/iar> (last visited on Nov. 24, 2020).

with a high quality education.” 105 ILCS 5/18-8-15(a)(1)(a). In making this declaration, the Legislature, by implication, admitted that current funding conditions deprive many districts of the funding needed to provide Illinois students with a “high quality” education as defined by the Learning Standards.

The comprehensive framework that exists today and defines both the substance and funding required for “an efficient system of high quality” education stands in stark contrast to what existed, or rather, did not exist, twenty-five years ago. As the dissent below aptly underscored, “the courts do not have to define what constitutes a high quality education.” *Cahokia Unit Sch. Dist. No. 187 v. Pritzker*, 2020 WL 2481518, at *8 (Ill. App. May 13, 2020) (Wharton, J., dissenting), *appeal allowed*, 154 N.E.3d 782 (Ill. 2020). The Legislature has already done that. It has now provided the judiciary with education standards and a funding formula that will enable the courts to properly adjudicate Plaintiffs’ claims under the Quality Education Clause. The impediment to justiciability that concerned the *Edgar* Court no longer exists.

B. *State Courts Have Relied on Similar Education Standards to Adjudicate Constitutional Violations.*

Courts in numerous other states have held that claims of inadequate education and funding under their respective constitutions are justiciable by relying on academic and assessment standards that are remarkably similar to those adopted by the Legislature. These rulings make clear that courts can, and should, use “the standards enunciated by the legislature and the state department of education” to fulfill the judicial obligation to interpret the Constitution and vindicate citizen’s rights to education. *Unified Sch. Dist. No. 229 v. State*, 885 P.2d 1170, 1186 (Kan. 1994); *see id.* at 1174 (stating judiciary has the role of safeguarding constitutional rights); *see also Abbott by Abbott v. Burke*, 693 A.2d.

417, 427 (N.J. 1997) (recognizing the “substantial efforts of the coordinate branches” to establish an education system “founded on standards that define the substantive meaning of education” and “provide for measures of educational performance and achievement”); *Delawareans for Educ. Opportunity v. Carney*, 199 A.3d 109, 120 (Del. Ch. 2018) (“When educating Disadvantaged Students, Delaware’s public schools must meet the standards and criteria that the Delaware Department of Education has chosen for itself. . . . A court can readily apply these established standards to the facts of the case.”).

For example, the Idaho Supreme Court held that its “duty to define the meaning” of the state education clause had “been made simpler . . . because the executive branch of the government ha[d] already promulgated educational standards pursuant to the legislature’s directive.” *Idaho Schs. for Equal Educ. Opportunity v. Evans*, 850 P.2d 724, 734 (Idaho 1993). Similarly, a New Mexico court recently relied on legislative educational standards to adjudicate the plaintiffs’ claim of a violation of the education clause of that state’s constitution. *Martinez v. State*, 2018 WL 9489378, at *7 (D.N.M. July 28, 2018).

The court remarked:

the legislature has already adopted statutory provisions which appropriately define adequacy for purposes of this litigation. This court will use those statutory definitions in determining whether the State, primarily through the Public Education Department (“PED”), has met its obligation.

Id. The Supreme Court of North Carolina likewise invoked the “[e]ducational goals and standards adopted by the legislature” in determining whether the state satisfied its constitutional obligation. *Leandro v. State*, 488 S.E.2d 249, 259 (N.C. 1997). And the Maryland Court of Appeals has ruled that the Legislature’s “comprehensive statewide qualitative standards” serve as reasonable guidelines to determine whether the state has

“provide[d] a thorough and efficient public school education” in compliance with the state constitution. *Hornbeck v. Somerset Cty. Bd. of Educ.*, 458 A.2d 758, 780 (Md. 1983).

Courts in at least two states have also adjudicated the constitutionality of school funding formulas that seek to provide students with the resources needed to meet a state’s academic standards. In 2009, the New Jersey Supreme Court considered whether that state legislature’s newly-enacted funding formula “provided sufficient support for the delivery of a thorough and efficient education as defined by [the state academic standards].” *Abbott*, 971 A.2d at 995. Similarly, the Kansas Supreme Court considered whether its legislative funding formula provided students with the resources necessary to meet state academic standards and was, therefore, constitutionally adequate. *Gannon v. State*, 402 P.3d 513, 518 (Kan. 2017). In both cases, the courts adjudicated the exact issue present here: whether the formula enacted by the state’s legislatures provided the required funding for students to receive a constitutionally adequate education.

The common thread from the rulings in these states is that academic content and assessment standards enacted by their legislatures—akin to those that now govern the delivery of public education in Illinois—give meaning and definition to the guarantees set forth in their respective constitutions. And courts can assess whether a state is providing the level of education required by a state’s constitution by reference to that legislative guidance. This Court should join these states by holding that Illinois courts have the requisite standards to adjudicate claims under the Illinois Quality Education Clause.

Amici recognize that this Court in *Edgar* declined to follow pre-1996 rulings in Kansas, Wyoming, Maryland, and Idaho that adjudicated education adequacy claims. At the time, of course, the ISBE and Legislature had not yet adopted the Learning Standards

or Common Core. But what is more, courts in each of these states have since reaffirmed the justiciability of education clause claims based on state academic standards. *See Gannon v. State*, 368 P.3d 1024, 1063 (Kan. 2016) ([W]hile we do not desire to become a supervisor of the school finance system, neither do we abandon our duty to the people of Kansas under their constitution to review the legislature’s enactments and to ensure its compliance with its own duty [under the Kansas Constitution].”); *Campbell Cty. Sch. Dist. v. State*, 181 P.3d 43 (Wyo. 2008); *Idaho Schs. for Equal Educ. Opportunity v. State*, 976 P.2d 913, 919 (Idaho 1993); *Bradford v. Md. State Bd. of Educ.*, Memorandum Opinion at 10, Case No. 24-C-94-340058 (Baltimore Cir. Ct., Jan. 16, 2020) (Carrion, J.). These determinations of justiciability have renewed relevance in light of the Illinois Legislature’s adoption of similar standards after *Edgar*.

II. JUDICIAL REVIEW OF PLAINTIFFS’ CLAIMS IS CONSISTENT WITH THE SEPARATION OF POWERS.

A finding of justiciability is necessary for the judiciary to perform its constitutional duty to enforce legislation and ensure its co-equal branches of government abide by the Illinois Constitution. In matters of compliance with the Constitution, the Legislature cannot police itself. Instead, “it is the duty of the judiciary to construe the Constitution and determine whether its provisions have been disregarded by the actions of any of the branches of government.” *Rock v. Thompson*, 85 Ill. 2d 410, 418 (1981). As this Court has held, “the judiciary has always had the right and duty to review legislative acts in light of the Constitution.” *Id.* at 418.

This reasoning applies with equal force to the Quality Education Clause claims in this litigation. It is also consistent with precedent in other states. Recently, in *William Penn School District v. Pennsylvania Department of Education*, 170 A.3d 414 (Pa. 2017), the

Supreme Court of Pennsylvania reconsidered its earlier ruling in *Marrero ex rel. Tabalas v. Commonwealth*, 739 A.2d 110 (Pa. 1999), in which the court held that adequacy claims under Pennsylvania’s Education Clause were non-justiciable political questions, similar to this Court’s ruling in *Edgar*. Rejecting *Marrero*’s reasoning, the Court in *William Penn* opted to follow “the clear majority of state courts that have held it their judicial duty to construe ... state education clauses like ours to ensure legislative compliance with their constitutional mandates.” *William Penn*, 170 A.3d at 463. In doing so, the Court rejected the notion that its review would be limited to “deploy[ing] a rubber stamp in a hollow mockery of judicial review,” and instead held that “it is feasible for a court to give meaning and force to the language of a constitutional mandate to furnish education of a specified quality . . . without trammeling the legislature in derogation of the separation of powers.” *Id.* at 457.

Other state courts have similarly held that, rather than infringing on the legislature’s political powers, judicial review of adequacy claims “ensures that the judiciary plays its proper role within a constitutional framework of checks and balances.” *See, e.g., Delawareans for Educ. Opportunity v. Carney*, 199 A.3d at 176 (“[T]he Education Clause directs the General Assembly to carry out a task. It does not say that the General Assembly gets to judge for itself whether it has fulfilled that task.”); *see also Cruz-Guzman v. State*, 916 N.W.2d 1, 9 (Minn. 2018) (“[T]he legislative branch is subject to the limitations imposed by the constitution; and, whenever it has clearly transcended those limitations, we have held that it is the duty of the judiciary to so declare.”) (citation and quotation marks omitted); *Columbia Falls Elementary Sch. Dist. v. State*, 109 P.3d 257 (Mt. 2005) (stating courts have the final “obligation to guard, enforce, and protect every right granted or

secured [in their states'] constitution”) (citation and quotation marks omitted); *Lake View Sch. Dist. No. 25 of Phillips Cty. v. Huckabee*, 91 S.W.3d 472, 484 (Ark. 2002) (avoiding judicial review “would be a complete abrogation of our judicial responsibility” and would do a “severe disservice to the people”).

Here, by defining the academic and financial contours of a constitutional “high quality” education, the Legislature has obviated any concern that the judiciary might encroach on legislative or executive powers in adjudicating the Plaintiffs’ constitutional claims. Instead, as a Delaware court recently noted, the reliance and use of “existing standards adopted by the legislative or executive branches to define and measure adequacy recognizes the primacy of the political branches in this area.” *Delawareans for Educ. Opportunity*, 199 A.3d at 165-66. Judicial review preserves the proper roles of each branch:

The judiciary must . . . recognize that the General Assembly has greater institutional competence in many areas and represents the preferred forum for addressing difficult social issues. . . . Nevertheless, the responsibility for determining whether a particular statutory regime complies with or violates the Education Clause, either facially or as applied, lies with the judicial branch.

Id. at 120. In similar fashion, the Wisconsin Supreme Court has observed that “grounding” its interpretation of the Education Clause in duly enacted statutes was, in effect, acknowledging “the legislature’s wisdom” in defining the meaning and substance of a constitutionally sound education. *Vincent v. Voight*, 614 N.W.2d 388, 407 (Wis. 2000).

Accordingly, judicial review and adjudication of Plaintiffs’ claims will preserve and strengthen, not undermine, the separation of powers doctrine. It will ensure that courts serve their fundamental institutional role of safeguarding the high quality public education that all school children deserve and are entitled to under the Illinois Constitution.

III. WITHOUT A FINDING OF JUSTICIABILITY, UNDER-RESOURCED SCHOOLS AND SCHOOL CHILDREN WILL BE LEFT WITHOUT RECOURSE.

If the Court declines to provide a constitutional check on the right to a high quality education, the citizens who stand to lose the most are those who are most in need of the Court's protection: the students in low-income school districts. The guarantee to a high quality education in the Illinois Constitution is not just a guarantee to those students born in wealthy school districts. It is a guarantee to all Illinois school children. Yet, despite this, students in low-income districts, who are disproportionately students of color, have long suffered from severe funding shortages, which in turn, result in inequitable student outcomes, thus perpetuating cycles of poverty and racial injustice.

Prior to the Illinois Legislature's adoption of EBF in 2017, Illinois' public education funding disparities had reached an unprecedented level of notoriety. Because Illinois relies significantly on local property tax revenue to fund schools, Illinois had one of the most inequitable K-12 public school funding formulas in the entire country.⁵ The quality of education that a student could expect to receive was effectively tied to the property wealth of the community he or she lived in. And while insufficient state funding permeated the entire state, from Cairo to Zion, it primarily affected schools serving students of color and those in poverty, which have the least ability to raise revenue.

⁵ Illinois Center for Tax and Budget Accountability, *Moving Forward: Illinois' Evidence Based School Funding Formula Can Reverse Decades of Inequity Created By The Foundation Formula It Replaced 2* (Oct. 10, 2018), available at <https://www.ctbaonline.org/reports/moving-forward-illinois-evidence-based-school-funding-formula-can-reverse-decades-inequity> (noting that for the school year 2014-2015, Illinois ranked "first in the portion of K-12 funding paid by local taxes and 50th in the portion paid by the state" (citing National Center for Education Statistics, *Revenues and Expenditures for Public Elementary and Secondary Education: School Year 2014-2015*)) (hereinafter, "Moving Forward").

Indeed, during the 2016-2017 school year, on average, Illinois' high-poverty districts received 26% less in per pupil funding (nearly \$4,500 per pupil) than its low-poverty districts.⁶ This is particularly troubling because research shows that low-income students, who typically begin their schooling academically behind their peers, need greater levels of investment to achieve success.⁷ Districts serving the most students of color received roughly 17% less in "state and local funds than districts serving the fewest students of colors."⁸

Put simply, Illinois was systematically failing low-income students and students of color, leading to inequitable student outcomes based on income level and race. School districts in communities that lacked local resources to fund education had, "on average, thousands of dollars less in per-pupil funding, significantly lower test scores, and lower graduation rates."⁹ And because these districts served larger portions of Black, Latinx, and English language learners, the funding system in Illinois was "structurally racist in

⁶ Danielle Farrie et al., *Making the Grade 2019 How Fair is School Funding in Your State?*, Education Law Center 7, 9 (2019) available at <https://edlawcenter.org/assets/Making-the-Grade/Making%20the%20Grade%202019.pdf> (hereinafter, "Making the Grade"); see also Ivy Morgan and Ary Amerikaner, *Funding Gaps: An Analysis of School Funding Equity Across the U.S. and Within Each State*, The Education Trust 10 (Feb. 2018) available at https://edtrust.org/wp-content/uploads/2014/09/FundingGapReport_2018_FINAL.pdf (noting that "[w]hile the state contributes slightly more to high poverty districts than low poverty districts and provides the highest poverty districts with about half of their total funding, state efforts are not enough to make up for the tremendous disparities in local funding between the highest and lowest poverty districts") (hereinafter, "Funding Gaps"); *id.* at 6-7 (demonstrating Illinois' funding disparities in Figures 1 and 2).

⁷ *Making the Grade*, at 12.

⁸ *Funding Gaps*, at 11.

⁹ *Moving Forward*, at 3.

application.”¹⁰ Among other statistics, the Illinois Center for Tax and Budget Accountability (“CTBA”), a non-partisan, non-profit and advocacy think tank, noted in 2018 that:

- Graduation rates differed by more than 15 percentage points between districts with the most and least number of students living in poverty;
- Nearly 60% of Black students attended districts with a concentration of low-income students of 75% or more, whereas just 6.53% of white students attended such schools;
- More than 82% of Illinois students who attended schools with the highest concentration of low-income students were Black or Latinx;
- In school districts with less than 10% low-income students, just 2.25% of students were Black and 7.35% were Latinx; and
- School districts in predominantly white districts and districts with the least low-income students achieved the highest test scores.¹¹

In 2017, the Legislature acknowledged these unacceptable outcomes and enacted the EBF to rectify Illinois’ broken public education funding system. The EBF calculates per district funding based on a multi-stage calculation, the first of which identifies the “Adequacy Target” for each district, or the cost of providing a district’s unique student population with an adequate education according to defined cost factors.¹² The second stage measures each district’s local resources for comparison to its Adequacy Target, and

¹⁰ *Id.*

¹¹ *Id.* at 2, 12.

¹² *Id.* at 21. Adequacy Targets are calculated through consideration of 34 different factors, including a combination of general and district-specific data such as enrollment; number of teachers, guidance counselors, and other advisors needed to serve the district’s unique student population; and costs for student activities and assessments. 105 ILCS § 5/18-8.15(b)(1).

the third stage distributes additional state funds to assist districts in meeting their Adequacy Targets.¹³

At the time the EBF was enacted, of the 853 school districts in Illinois, only 146 districts were spending at or above their Adequacy Targets, and 707 districts were spending less than what evidence indicated was needed to provide children with an adequate education.¹⁴ The “adequacy gap” of a student of color—calculated as the difference between a district’s per pupil Adequacy Target under the EBF and the state and local funding actually received—was roughly double that of a white student when considering all school districts in Illinois. In 2017, Illinois’ average adequacy gap per white pupil was \$2,145.87, while the Black and Latinx averages were \$4,391.01 and 4,280.57, respectively.¹⁵ Even after excluding the 146 districts that spend at or above their adequacy targets, the average adequacy gaps of Black and Latinx students were still 41% and 47% worse than white students, respectively.¹⁶

The vast majority of new state funding under the EBF is employed as an equalizer to those districts furthest from adequacy.¹⁷ To accomplish this goal, the EBF divides Illinois school districts into 4 tiers.¹⁸ Tier 1 represents the districts most in need of funding,

¹³ *Moving Forward*, at 21.

¹⁴ *Id.* at 26 (noting that more than 86% of Illinois children attend schools that are inadequately funded).

¹⁵ *Id.* at 26 (displaying adequacy gap per pupil for white, Black and Latinx students based on enrollment data from 2015–18 in Figure 35).

¹⁶ *Id.* at 27 (displaying adequacy gap per pupil for white, Black and Latinx students in districts with adequacy gaps based on enrollment data from 2015–18 in Figure 36).

¹⁷ *Id.*

¹⁸ 105 ILCS § 5/18-8.15(g)(3).

and, on the other end of the spectrum, Tier 4 is comprised of schools with sufficient or even excess funding. The approximate student demographics of each tier speaks volumes regarding Illinois' racial and income inequities when it comes to educational opportunity:

Tier	Average per pupil Adequacy Gap in 2020	Percentage of State's Black student population within tier	Percentage of State's Latinx student population within tier	Percentage of State's white student population within tier	Percentage of State's low-income student population within tier
1	\$5,203	75%	71.1%	36.2%	70.2%
2	\$3,075	19.7%	17%	37%	21.2%
3	\$595	1.7%	4%	7.7%	2.7%
4	excess of \$3,672	3.6%	7.9%	18.4%	5.9%

As the above chart shows, nearly 95% of Black students and 88% of Latinx students are in Tier 1 and 2 districts, which are the districts most in need of funding.¹⁹

While the adoption and continued implementation of the EBF has the ability to counter this significant and disturbing inequitable funding, if the Legislature fails to meaningfully follow through on its funding promises, students' constitutional rights under the Quality Education Clause will continue to be compromised. For example, the EBF requires that Illinois increase public education funding by at least \$350 million (\$50 million of which is devoted to property tax relief grants) each year, 105 ILCS 5/18-8.15(g)(9), with the goal of providing the additional funding—an estimated \$7.2 billion—necessary to

¹⁹ Data in the chart is compiled in CTBA, *The Impact of Underfunding the Evidence-Based Funding Formula*, 4 (June 24, 2020) available at <https://www.ctbaonline.org/reports/impact-underfunding-evidence-based-funding-formula> (percentages of low-income students calculated using “# of Low-Income” student data listed in each tier in Figure 3); *id.* at 5 (displaying average per pupil adequacy gap for each Tier in 2018 and 2020 in Figure 6); *id.* at 6 (displaying the distribution of EBF funding by tier and breaking down racial demographics of each tier in Figure 8).

provide all Illinois students a high quality education by 2027. 105 ILCS 5/18-8-15(a)(1). For each of the first three years of the EBF, Illinois satisfied the minimum \$350 million funding increase.²⁰ These contributions allowed the State to begin to make small strides to lessen the adequacy gaps in some of Illinois' least affluent school districts.

Yet, a recent analysis by the CTBA demonstrates the dire effects of providing only the minimum funding. If Illinois continues to adopt minimum funding increases, public schools will not be fully funded under the EBF until 2044.²¹ In other words, many Illinois students will be deprived of an adequate education for an additional 24 years on top of the generations of students in high poverty districts who have endured decades of inadequate funding and resources already. Perhaps most troubling, however, is that Illinois did not provide any funding increase for K-12 education for FY 2021.²² The failure to increase funding in FY 2021, adjusted for inflation, will result in \$242 million less public education funding in "real terms" and threatens to undo the incremental progress observed during the initial years of the EBF.²³

²⁰ CTBA, *Fully Funding the Evidence-Based Formula: 2020 Update* 1 (Aug. 4, 2020) available at <https://www.ctbaonline.org/reports/fully-funding-evidence-based-formula-2020-update> (demonstrating EBF nominal shortfall in FY2020, FY 2030, F& 2040, and FY2044 if minimum funding increases continue in Figure 1) (hereinafter, "EBF 2020 Update").

²¹ *Id.* at 2; *see also id.* (showing that If Illinois continues to increase appropriations by the \$350 million minimum, schools will not be fully funded in terms of inflation-adjusted dollars until 2059 in Figure 2).

²² Illinois State Board of Education, *Finance, Budgets & Funding Evidence-Based Funding Distribution Calculation* available at <https://www.isbe.net/Pages/ebfdistribution.aspx> (last visited Nov. 24, 2020) ("In fiscal year 2021, per Public Act 101-0637, no new tier funding will be provided.").

²³ *EBF 2020 Update* ("[A]fter accounting for inflation, K-12 funding in FY 2021 will be \$242 million, or 2.9 percent less in real terms than it was in FY 2020.").

As a result of Illinois' funding failures, Illinois has effectively created a two-tier system where students in low income districts—who are disproportionately students of color—are denied what their peers in more affluent districts have: the resources to achieve the Illinois Learning Standards and advance to post-secondary education institutions. Illinois courts should not stand by while generations of students are deprived of the constitutional right to a high quality education—especially where, as here, the data conclusively shows that low-income students and students of color will shoulder the brunt of Illinois' funding failures.

As *amici* have seen firsthand, inadequacies in funding result in systematic failures in the quality of education offered by schools serving students of color in high-poverty districts. For example, an informal survey of parent leaders by *amicus* BPNC found widespread agreement that their Southwest Side, predominantly Latinx schools lacked enough funding to provide students an adequate education. Parents observed that their schools lacked resources for librarians, social workers, nurses, and teachers' assistants, and that the schools could not afford enough laptops, tablets, or other technology to meet students' needs during remote learning. Parents further noted that the school lacked the ability to offer sufficient courses or enrichment programs to its students. Similarly, a 2018 report that sampled course offerings in K-8 and high schools in Chicago found that schools serving primarily African-American, Latinx, and low-income students offered far fewer science, mathematics, and arts courses than more affluent, whiter counterparts.²⁴ The high

²⁴ Journey for Justice Alliance, *Failing Brown v. Board: A Continuous Struggle Against Inequality in Public Education*, at 28-37 (2018) available at <https://cdn.website-editor.net/64c6ef043cd5408eaeafeac3b38386db/files/uploaded/Final%2520Failing%2520Brown%2520v%2520Board%2520Abridged.pdf>.

schools, which served 99% African-American students, offered far fewer Advanced Placement or other high-level courses to help prepare students for college or provide opportunities to earn college credit.²⁵ These course disparities not only affect students' ability to succeed on statewide assessments, they can have a far-reaching impact on their lives, particularly for the most disadvantaged students. Students who take more challenging high school courses are more likely to graduate high school and go on to college.²⁶ Even for students who do not go to college, better high school preparation leads to better jobs and economic outcomes—particularly for Black students.²⁷

Within the Chicago Public Schools (“CPS”), funding shortfalls have contributed to schools being forced to cut teachers and programs such as cosmetology and pipefitting designed to help students find work.²⁸ Unfortunately, a substantial portion of CPS's budget must be spent repairing old buildings and servicing prior debts, leaving insufficient funds to maintain broad course offerings.²⁹ In 2013, CPS cited the need to cut

²⁵ *Id.* at 8-9, 32-37.

²⁶ *See generally* Mark Long, et al., *Effects of High School Course-Taking on Secondary and Postsecondary Success*, 49 AM. EDU. RES. J. 285, 303 (2012).

²⁷ *See* Jim Hull, *The Path Least Taken, A Question to Learn More About High School Graduates Who Don't Go To College*, National School Boards Association, Center for Public Education, at 12-13 (2016) available at <https://nsba.org/-/media/NSBA/File/cpe-the-path-least-taken-report-2014-26.pdf> (stating high school graduates are more likely to have a full-time job, work for an employer who offers medical insurance and less likely to be unemployed or receive public assistance).

²⁸ *See* Sarah Karp, *5 Things To Know About Chicago Public Schools' Budget*, NPR (Aug. 20, 2019), <https://www.npr.org/local/309/2019/08/20/752511828/5-things-to-know-about-chicago-public-schools-budget>.

²⁹ *See id.* (stating CPS budgeted \$820 million for capital expenses).

costs as a rationale for closing 50 schools.³⁰ These closures and reduced course offerings reinforce the downward spiral in which coursework and staffing inequities lead to declining test scores, enrollment, and potentially, more closures.

Dyett High School offers one example of the impact of funding cuts on the quality of education offered. In 2011, funding cuts resulted in the loss of the school's assistant principal, counselor, and art teacher.³¹ The school could only offer one honors class, no AP classes, and an online-only senior art class.³² More recently, residents of the impoverished North Lawndale area who sought to improve the quality of education in their neighborhood were told by CPS that the only way to obtain enough resources to create a new school facility would be to close three existing schools in the neighborhood—likely destabilizing the community and creating a dilemma for parents seeking an adequate education for their children.³³

³⁰ Pauline Lipman et al., *Root Shock: Parents' Perspectives on School Closings in Chicago*, Collaborative for Equity and Justice in Education, University of Illinois at Chicago College of Education 1 (June 2014), available at <http://ceje.uic.edu/wp-content/uploads/2014/06/Root-Shock-Report-Compressed.pdf>.

³¹ See Journey for Justice Alliance, *Death by a Thousand Cuts: Racism, School Closures, and Public School Sabotage Voices From America's Affect Communities of Color*, 11 (May 2014).

³² Rhoda Rae Gutierrez and Pauline Lipman, *Dyett High School & The 3 Ds of Chicago School Reform: Destabilization, Disinvestment, Disenfranchisement*, Collaborative for Equity and Justice in Education 2 (Aug. 2012), available at <http://ceje.uic.edu/wp-content/uploads/2013/11/Fact-Sheet-Dyett1.pdf>.

³³ Sarah Karp, *Plans Brewing To Close Three West Side Schools And Replace Them With A New School*, WBEZ (Sept. 11, 2020), available at <https://www.wbez.org/stories/plans-brewing-to-close-three-west-side-schools-and-replace-them-with-a-new-school/c5613f43-ad3e-4689-bf6c-2890b458b204>; <https://news.wttw.com/2020/11/01/north-lawndale-concerns-over-proposal-consolidate-3-cps-elementary-schools>.

The impact of inadequate funding is just as deeply felt in districts outside of Chicago that serve primarily low-income students and students of color. The northern suburb of Waukegan, for example, serves a student population that is 64% low-income families, 79.5% Hispanic, and 13.2% Black.³⁴ The school district is at only 60% of adequate funding,³⁵ and before the passage of EBF struggled to meet students' needs, with inadequate school facilities, leaky pipes, postponed classroom repairs, and few computers for students.³⁶ As the State falls behind on making good on its promise to fully fund districts by 2027, Waukegan faces an estimated \$28 million shortfall in this year's schooling budget.³⁷

These experiences demonstrate why judicial oversight of the right to a high quality education as defined by the Legislature is necessary. The right to a high quality education should serve as an equalizer, allowing all Illinois children an opportunity to excel in school, obtain academic success, and ultimately contribute to society. The adoption of the Learning Standards, together with the Evidence-Based Funding formula, now provides the clear pathway to fulfill this constitutional right. Without a finding of justiciability, however, students living in under-resourced school districts will have no recourse to ensure that they

³⁴ Illinois Report Card, *Waukegan CUSD 60*, available at <https://www.illinoisreportcard.com/District.aspx?source=profile&Districtid=34049060026>.

³⁵ *Id.*

³⁶ *To See Divide Between Rich Schools and Poor, Look to Waukegan And Stevenson*, Chicago Tribune (Sept. 6, 2016) available at <https://www.chicagotribune.com/suburbs/lake-county-news-sun/ct-rich-poor-school-districts-20160906-story.html>.

³⁷ Steve Sadin, *'We Don't Spend Money We Don't Have': Waukegan School Board gets Breakdown of Budget For Coming School Year*, Lake County News-Sun (Aug. 6, 2020) available at <https://www.chicagotribune.com/suburbs/lake-county-news-sun/ct-lns-waukegan-school-board-st-0807-20200806-slovhyqdqjdapepnuke2cpocha-story.html>.

are provided a constitutionally adequate education, thus perpetuating racial inequalities and poverty cycles.

IV. STUDENT SUCCESS DEPENDS, IN PART, ON ADEQUATE FUNDING

There can be no doubt that increased funding directly benefits academic performance. As one judge put it, “[o]nly a fool would find that money does not matter in education.” *Hoke Cty. Bd. of Educ. v. State*, 2000 WL 1639686, at *57 (N.C. Super. Ct. Oct. 12, 2000), *aff’d*, 599 S.E.2d 365 (N.C. 2004). Academics echo this sentiment: “To put it bluntly, any claim that there is little evidence of a statistical link between school spending and student outcomes is demonstrably false.”³⁸ Indeed, there is “a sizeable and growing body of rigorous empirical literature” showing “that state school finance reforms can have substantial positive effects on student outcomes.”³⁹ This is especially pronounced as it relates to low-income and minority students. As Justice Wharton opined in his dissent below, increased educational funding is not only required under the Quality Education Clause of the Illinois Constitution but also will have far-reaching positive impacts on society as a whole. *Cahokia Unit Sch. Dist. No. 187*, 2020 WL 2481518, at *9 (Wharton, J., dissenting) (citing low high school graduation rate among Illinois Department of Corrections inmates). Indeed, a recent study showed that “for low-income children, a 10 percent increase in per-pupil spending each year for all 12 years of public school is

³⁸ C. Kirabo Jackson, *Does School Spending Matter? The New Literature on an Old Question*, 2 (Dec. 10, 2018) available at <https://www.nber.org/papers/w25368.pdf>.

³⁹ Bruce D. Baker, *Revisiting the Age-Old Question: Does Money Matter in Education*, The Albert Shanker Inst. 14 (2012) available at <https://files.eric.ed.gov/fulltext/ED528632.pdf>.

associated with roughly 0.5 additional years of completed education, 9.6 percent higher wages, and a 6.1-percentage-point reduction in the annual incidence of adult poverty.”⁴⁰

Conversely, evidence shows that inadequate funding leads to lower test scores and lower graduation rates. Test scores in the Plaintiff school districts are demonstrative. Illinois provides the Scholastic Aptitude Test (“SAT”) to high school students to assess the students’ academic achievement.⁴¹ Based on SAT scores, ISBE categorizes students as demonstrating (a) minimal, (b) incomplete, (c) adequate, or (d) thorough understanding of the knowledge and skills encompassed in the Learning Standards.⁴² In the Plaintiff districts, more than 70% of the students—71% in Math and 77% in ELA—received scores demonstrating a minimal or incomplete understanding of the Illinois Standards.⁴³ These scores rank considerably below state averages and are no doubt caused, in part, by the fact these school districts are receiving, on average, just 64% of their respective adequacy funding targets.⁴⁴

⁴⁰ C. Kirabo Jackson, et al., *Boosting Educational Attainment and Adult Earnings*, Education Next (last updated on May 28, 2015), available at <https://www.educationnext.org/boosting-education-attainment-adult-earnings-school-spending/>.

⁴¹ Illinois Report Card, *Academic Progress SAT* available at <https://www.illinoisreportcard.com/State.aspx?source=trends&source2=sat&Stateid=IL>. See also Illinois State Board of Education, *Statewide SAT Performance Levels FAQ For School and District Administrators*, available at <https://www.isbe.net/Documents/Statewide-SAT-Performance-Levels-Admin-FAQ.pdf>.

⁴² Illinois Report Card, *Academic Progress SAT* available at <https://www.illinoisreportcard.com/State.aspx?source=trends&source2=sat.details&Stateid=IL>.

⁴³ Averages based on 2019 data included in the plaintiff districts’ 2019 Illinois Report Cards available at <https://www.illinoisreportcard.com/>. The averages exclude Plaintiff school districts that do not have high schools.

⁴⁴ In 2019, 66% and 64% of students in the State did not meet or partially met the Math and ELA Learning Standards, respectively. Illinois Report Card, *Academic Progress SAT* available at <https://www.illinoisreportcard.com/State.aspx?source=trends&source2=sat.details&Stateid=IL>. Plaintiff funding averages are based on 2019 data included in Plaintiff

Similar results exist at the elementary and junior high levels. In the plaintiff school districts, IAR scores from the vast majority of eighth grade students fail to fully satisfy the Learning Standards. In English Language Arts and Math, 62% and 74% of the respective IAR scores from eighth grade students in the Plaintiff districts (1) “did not yet meet expectations,” (2) “partially met expectations,” or (3) “approached expectations” set forth by the ISBE.⁴⁵ Further, there is a broad disparity between low-income and non-low-income IAR scores across the state. In particular, low-income students in grades 3 – 8 are twice as likely as non-low-income students to receive IAR scores that either do not meet or only partially meet the prescribed Learning Standards.⁴⁶

The only way the State will be able to break this cycle is by living up to the rights guaranteed under the Illinois Constitution and providing all Illinois citizens a high quality education, regardless of where they reside. The Legislature has defined the level of education that Illinois students must receive. It is now time for the judicial branch to give force to the Constitutional guarantee of a high quality education.

districts’ Illinois Report Cards available at <https://www.illinoisreportcard.com/>. This data excludes Plaintiff school districts that do not have high schools.

⁴⁵ Averages based on 2019 data included in the plaintiff districts’ 2019 Illinois Report Cards available at <https://www.illinoisreportcard.com/>. Across the state, 60% of students did not fully meet expectations in ELA, and 67% of students did not fully meet expectations in math. *See* Illinois Report Card, *Academic Progress IAR*, available at <https://www.illinoisreportcard.com/State.aspx?source=trends&source2=iar&Stateid=IL>.

⁴⁶ This is based on the 2019 “summary” Math and ELA Illinois Assessment of Readiness scores available on [illinoisreportcard.com](https://www.illinoisreportcard.com). In ELA, 50% of low-income students—compared to 21% of non-low-income students—did not meet or partially met the Illinois Learning Standards. In Math, 57% of low-income students—compared to 26% of non-low-income students—did not meet or partially met the Illinois Learning Standards. *See id.*

CONCLUSION

For the foregoing reasons, *Amici* respectfully requests that the Court reverse the decision of the circuit court and remand the case for further proceedings consistent with the Court's instructions.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 7,580 pages or words.

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