No. 126212

IN THE

SUPREME COURT OF ILLINOIS

CAHOKIA UNIT SCHOOL DISTRICT NUMBER 187, GRANT CENTRAL CONSOLIDATED SCHOOL DISTRICT NO. 110, PANA COMMUNITY UNIT SCHOOL DISTRICT NO. 8, BETHALTO COMMUNITY UNIT SCHOOL DISTRICT NO. 8, BOND COUNTY COMMUNITY SCHOOL DISTRICT NO. 2, BROWNSTOWN COMMUNITY UNIT SCHOOL DISTRICT 201, BUNKER HILL COMMUNITY UNIT SCHOOL DISTRICT NO. 8, GILLESPIE COMMUNITY UNIT SCHOOL DISTRICT NO. 7, ILLINOIS VALLEY CENTRAL COMMUNITY UNIT SCHOOL DISTRICT NO. 321, MERIDIAN COMMUNITY UNIT SCHOOL DISTRICT 223, MT. OLIVE COMMUNITY UNIT SCHOOL DISTRICT NO. 5, MULBERRY GROVE COMMUNITY UNIT SCHOOL DISTRICT NO. 1, NOKOMIS COMMUNITY UNIT SCHOOL DISTRICT NO. 22, OSWEGO COMMUNITY UNIT SCHOOL DISTRICT 308, OREGON COMMUNITY UNIT SCHOOL DISTRICT 220, SOUTHWESTERN COMMUNITY UNIT SCHOOL DISTRICT 9, STAUNTON COMMUNITY UNIT SCHOOL DISTRICT NO. 6, STREATOR TOWNSHIP HIGH SCHOOL DISTRICT 40, VANDALIA COMMUNITY UNIT SCHOOL DISTRICT NO. 203, WOOD RIVER-HARTFORD SCHOOL DISTRICT NO. 15, CARLINVILLE COMMUNITY UNIT SCHOOL DISTRICT NO. 1, and TAYLORVILLE COMMUNITY UNIT SCHOOL DISTRICT NO.3, Plaintiffs-Appellants v. J.B. PRITZKER, Governor of the State of Illinois, and THE STATE OF ILLINOIS, Defendant-Appellee	) Appellate Court, Fifth)Judicial District, Case No. 5-18-)0542))) Circuit Court, St. Clair) County,) Illinois) Twentieth Judicial Circuit,) Case No. 2017-CH-301))) The Honorable) JULIE K. KATZ,) Judge Presiding.)

REPLY BRIEF OF PLAINTIFFS-APPELLANTS

Thomas H. Geoghegan
Michael P. Persoon
Will Bloom
Despres, Schwartz & Geoghegan, Ltd.
77 West Washington Street, Suite 711
Chicago, Illinois 60602
(312) 372-2511
tgeoghegan@dsgchicago.com
mpersoon@dsgchicago.com
wbloom@dsgchicago.com

Counsel for Plaintiffs-Appellants

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INTRODUCTION

Under Article X of the Illinois Constitution, the State has a legal duty to provide the resources deemed necessary by the State for the education the State requires. The State has authorized the State Board of Education to adopt the rigorous Common Core standards to which the present Learning Standards are aligned. *See* 105 ILCS 5/2-3.64a-5. The State now assesses the students for meeting these highly detailed Learning Standards; and the State uses the assessments to limit the eligibility of students for the State's post-secondary education. *Id* The State now directly determines the life chances of young people in this State. Every year the State itself is declaring thousands of students in low wealth districts as failures. The State itself is placing these assessments in their so called "permanent records."

In the Evidence Based Funding for Student Success Act of 2017 ("Evidence Based Funding Act"), the General Assembly adopted a formula known as Evidence Based Funding ("EBF") to calculate the resources deemed necessary for the plaintiff districts to prepare the students for the education the State requires. Unlike the State's previous funding, the EBF is targeted to fund specific educational practices that have been shown to be likely to raise student achievement. As set out in 105 ILCS 5/18-8.15 (1)(a), the purpose of this Act is to create an "Adequacy Target" specific to each district, to achieve the constitutional rights of the students under Article X. The defendant Governor denies any obligation to meet the "Adequacy Target" or provide the funding deemed necessary by the General Assembly to achieve the students' constitutional rights. The Governor also denies the declarations in the Evidence Based Funding Act that the extra funding will raise student achievement.

The General Assembly has the better of the argument, both as a matter of its legislative prerogative and the facts. As set out in the recent April 2021 report by Advance Illinois, a bipartisan organization of distinguished citizens who advocate for better schools, additional funding will raise student achievement and funding of the EBF is a necessary though not sufficient condition for students to achieve the education the State requires.[1]

The full funding of the EBF called for by the General Assembly in the 2017 Evidence Based Funding Act still does not exist, and the life chances of low-income students in low-wealth districts are being irreparably harmed by the failure to fund it. The 22 plaintiff school districts bring this action for a declaratory judgment that the State's ongoing failure to give them the resources deemed necessary by the State itself under the EBF formula deprives them of their constitutional rights. The failure – a continuing failure the defendant Governor claims to have no obligation to correct – deprives both the districts and their students of their rights under the Article X, the Education Article, and the Equal Protection Clause, Article I, section 2.

There are two different ways to describe how the State has been depriving plaintiffs and their students of their constitutional rights. First, Plaintiffs and their students have an affirmative legal entitlement to the funding deemed necessary by the State for the education the State requires. Second, Plaintiffs and their students also have a related right not to be stigmatized by the State for failing to meet the Learning

[1] Advance Illinois, *Investing in Illinois' Students: An Analysis of Evidence-Based Funding and the Path to Equity, Student Success, and Long-Term COVID-19 Recovery*, April 2021, https://www.advanceillinois.org/publications/investing-in-illinois-students-an-analysis-of-evidence-based-funding-and-the-path-to-equity-student-success-and-long-term-covid-19-recovery (last viewed April 26, 2021) [hereinafter "Advance Illinois].

Standards when the State acknowledges the plaintiff districts do not have enough resources for the education the State requires.

The defendant Governor's brief is an attack on the declarations and statement of policy set out by the General Assembly in the Evidence Based Funding Act. He rejects the legislative declaration that funding of the EBF is a constitutional entitlement. He is skeptical that the money will raise student achievement as the General Assembly declared. But in that Act, the General Assembly states that full funding of the EBF will allow even low-income or at-risk students to develop "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). This can only be a goal, but as the General Assembly clearly believes, it is the obligation of the State to provide the means to achieve it. The State itself should not be an obstacle in the way of the goal. The Evidence Based Act goes on to state:

> …this Section creates a method of funding public education that is evidence-based; is sufficient to ensure every student receives a meaningful opportunity to learn irrespective of race, ethnicity, sexual orientation, gender, or community-income level; and is sustainable and predictable. When fully funded under this Section every school shall have the resources, *based on what the evidence indicates is needed,* to:
>
> (A) provide all students with a *high-quality education…*
>
> (B) ensure all students receive the education *they need to graduate from high school with the skills required for post secondary education…*
>
> (C) reduce, with a goal of eliminating, the achievement gap between *at-risk and non-at-risk students* by raising the performance of at-risk students and not by reducing standards; and
>
> (D) ensures this State satisfies *its obligation* to assume the *primary responsibility* to fund public education…

105 ILCS 5/18-8.15 (a)(1) (emphasis supplied).

This case is necessary because the Governor rejects and denies that there is such a relationship between educational funding and educational outcomes. The Governor is skeptical that the low-income children in low-wealth districts can do any better than they are doing right now. He denies there is a necessary relationship between funding the EBF and increasing student achievement. He simply disagrees with the General Assembly and says he has no duty to seek funding of the EBT. Under the "officer exception" to sovereign immunity, plaintiffs are entitled to an order declaring that plaintiffs and their students do have constitutional rights and the Governor should be doing "the business of the State" by seeking to achieve them rather than obstruct them. It is hoped that a declaratory judgment will be enough to change the Governor's conduct without any further relief. In addition, though, plaintiffs do seek an order directing the Governor to have a long-term plan calculated to achieve full funding of the EBF. Plaintiffs now wish to address selected arguments in the Governor's brief.

ARGUMENT

I. Under Article X, the State must provide the funding deemed necessary by the State for the education the State requires.

This case brings the following claim: that Plaintiffs and their students are entitled to the aid the State itself deems necessary for the education the State requires. The Governor is wrong that plaintiffs are seeking to "constitutionalize" the Learning Standards. Plaintiffs seek no such thing. They seek only the funding of the EBF calculated to give low wealth districts what they need to meet the State's own standards. As this Court stated in *Citizens for Educational Rights v. Edgar,* 174 Ill.2d 1, 28-32

(1996), a "high quality" education for purpose of Article X is what the General Assembly and State Board of Education – with the participation of the public – have agreed for it to be. It is not enforceable in the abstract: it cannot be divined by the judicial branch, until it is made specific and concrete by the other branches. *Edgar* says that "[t]here is no dispute as to the nature of this guarantee in the abstract…" *Id* at 24. And it is consistent with *Edgar* to enforce a guarantee that is no longer abstract but detailed and specific.

Nowhere do plaintiffs seek to have the Court define a "high quality" education in the abstract, or suggest it is the judicial role to do so. Under *Edgar,* and under the claim brought here, the General Assembly and State Board are free to: (1) change the standards, (2) abandon the standards, (3) stop enforcing the standards, or using them to assess the students, or (4) change the methodology to determine the funding necessary to meet the standards. What the State is not free to do is to require the standards and then refuse to provide the funding the State itself deems necessary for schools to prepare the students to meet them.

II. Unlike the amendment on the ballot in the 1994 election, plaintiffs are not seeking "equal opportunity" which arguably would have required equal per capita student spending.

On the ballot in 1994 was amendment to Article X to add language requiring an "equal opportunity," which arguably would have required equal per capita spending for student instruction throughout the State. This would have required a shift of existing State aid from high-wealth districts to low-wealth districts, to ensure every district spent the same amount of money. Something similar appears to be what the school districts in *Edgar* sought. Plaintiffs make no claim to equality, or equal per capita spending. Nor does the Education Based Funding Act aim for such equality. As set out in 105 ILCS

5/18-8.15, the Evidence Based Funding Act seeks incremental increases for the low-wealth districts to meet their respective "adequacy" targets. It does not subtract or reduce State aid now going to high wealth districts. Even if the low-wealth plaintiff districts reach their adequate capacity targets, the high-wealth districts will continue to spend more—often much more and in many districts.

As to why voters rejected a constitutional amendment in 1994, no singular intent can be divined then or now. Many voters may have been wary of changing Article X without knowing what it would require. It is not a bar to the General Assembly's later adoption of the Learning Standards and its even later determination of a constitutional right to enough funding for the education the State now requires.

III. The plaintiff school districts have standing to bring these constitutional claims in their own behalf.

As the Governor acknowledges, school districts have standing to bring constitutional claims against the State. *See Cronin v. Lundberg,* 66 Ill.2d 47 (1976) (standing to bring equal protection but not due process claims). Consistent with the *Cronin* holding, school districts also brought such claims in *Edgar,* where the Court noted: "The plaintiffs in this action are the Committee for Educational Rights (which consists of more than 60 school districts associated pursuant to an intergovernmental agreement), the boards of education of 37 school districts named individually, and a number of students and their parents." *Edgar, supra,* at 5. In general, as set out in *Greer v. Illinois Housing Authority,* 122 Ill.2d 462 (1988), to have standing, parties only have to show "injury in fact" from breach of a legal duty, such as the State's breach of its duty to provide "high quality" schools and education. The plaintiffs need not show that they are in the "zone of interests," or even the holders of the constitutional right.

By any standard, the plaintiff districts have suffered an "injury in fact" in not having the resources deemed necessary to provide the education required by the State. The Evidence Based Funding Act is a calculation of this injury. As the Act makes clear, the plaintiff districts need full funding of the EBF to carry out their constitutional mission to "provide all students with a high-quality education… and … [to] ensure all students receive the education… to pursue post-secondary education and training for a rewarding career…[.]" 105 ILCS 5/18-8.15 (a)(1)(A) and (B).

Apart from this actual injury, the low-wealth districts suffer a further cascade of injuries when they fail to receive the required resources. Failure rates are higher. Parents shun the schools and move to other districts. When they move, the tax base goes down, and there is even less local capacity used to determine the EBF. The funding gap which the EBF is designed to correct becomes even worse. The plaintiff districts end up in a cycle with more parents moving away and both tax base and local capacity shrinking even more. This is palpable injury. As other state supreme courts have concluded in school funding case, the districts have standing because they have suffered "a distinct palpable injury (lack of adequate funds) that has a fairly traceable causal connection to the actions of the State…[.]" *Idaho Schools for Equal Opportunity et al v. Evans,* 859 P.2d 724, 123 Idaho 572 (1993); *see William Penn v. State Board of Education,* No. 587 M.D. 2014(Pa); *Gannon v. Kansas*, 308 Kan. 372 (2018).

IV. The plaintiff school districts also have standing to represent their students.

In addition to standing in their own capacity, the plaintiff districts have standing to assert the rights of their students. Virtually all the students in these 22 low-wealth districts are legal minors. By state law, the plaintiff districts are "*in loco parentis*" for

these minors, at least with respect to matters of their education. *See, e.g.,* 105 ILCS 5/34-84a. This Court has previously declared that the districts stand in relation of "*in loco parentis*" with respect to the students. *See, e.g., Gerrity v. Beatty* 71 Ill.2d 47 (1958). The rights of plaintiff districts to have "high quality educational institutions" are legally intertwined with the rights of the students to attend them. The plaintiff districts are well suited to present the claims of these students when these students lack the legal capacity to do so.

V. The Governor is a proper defendant by participating in the deprivation of plaintiffs' constitutional rights.

The Governor has been the first named party defendant in several cases involving funding of the State's constitutional obligations. *See, e.g., Heaton v. Quinn (in re Pension Litigation)* 2015 IL 118585 (2015); *Edgar, supra*. Suing the Governor is the recognized remedy for these harms. Here the Governor is also participating in the deprivation of plaintiffs' constitutional rights. In doing so he is subject to suit under the "officer exception." *Leetaru v. University Board of Trustees,* 2015 IL 117485 (2015). This exception to sovereign immunity applies when the Governor is not "doing the business which the sovereign has empowered him or her to do…" Id, at 47.

By challenging the funding of the EBF, by rejecting the declarations of the General Assembly that it is a constitutional obligation, and by failing to submit budgets to achieve the constitutional rights of plaintiffs, the Governor is failing to do the business of the State. It is the obligation of the "Governor… [to] prepare and submit to the General Assembly, at a time prescribed by law, a State budget…[.]" Under 15 ILCS 20/50-5(a), that budget includes the "Common School Fund," one major element or category of it being the EBF.

The Governor refuses to heed the funding required by the General Assembly and the State Board of Education, which is the highest policy making body for education in the State. In fiscal year 2021, the Governor rejected the State Board's recommendation of $412 million in additional funding of the EBF. Samantha Smylie, *Pritzker's proposed budget keeps Illinois school funding flat for a second year*, Chalkbeat Chicago, Feb. 7, 2021, https://chicago.chalkbeat.org/2021/2/17/22287711/pritzkers-proposed-budget-keeps-school-funding-flat-for-a-second-year. Likewise, there is no increase for fiscal year 2022, which starts in just two months. But the Governor has gone much further in depriving Plaintiffs and their students of their right to a constitutionally adequate education.

The Governor in this case asks the Court to reject the Evidence Based Funding Act itself, or the declarations made in that Act. As the Governor's brief makes clear, the Governor: (1) denies there is a constitutional right to meet the learning standards under Article X, (2) denies there is any obligation on the State to provide the resources deemed necessary by the General Assembly as set out in the Evidence Based Funding Act, (3) denies or is skeptical that funding of the EBF will improve the educational achievement of the students, as the Act declares, and (4) all but says that such State spending is wasted on these students.

The Governor's function as an executive is to uphold and execute the laws – including the Evidence Based Funding Act – and not to ignore or demean it. There is no greater obstacle to the achievement of Plaintiffs' constitutional rights than the position of the Governor that no such rights exist and funding will not enhance student achievement.

VI. The Governor has an important constitutional role in the funding of public education.

The Governor is wrong that the funding of public education is "exclusively committed" to the General Assembly. Both Article VIII, section 2 and 15 ILCS 20/50-5(a) set out a constitutional and legal role for the Governor to provide a budget recommending what spending on education should be. The budgetary process is complex. The General Assembly depends on the superior knowledge and expertise of the Governor to determine what the State can and cannot afford. There is good reason why the submission of such a budget is a constitutional obligation, and necessary for the General Assembly to perform its own legislative function. As state above, the General Assembly normally accepts the recommendation of the Governor; at least with respect to funding of the EBF. Based on the experience of the past five fiscal years, there is no reason to think that the General Assembly will fail to approve the increase in funding the EBF, and the Governor has a duty as an executive to give such funding a priority. Instead, the Governor has made clear that in his opinion, it does no good at all. According to his reasoning and unlike other problems, education cannot be improved with more money. Nor is it lost on the General Assembly in considering how much to fund the EBF that the Governor has a line-item veto over such funding.

VII. Plaintiffs do not seek – or require – "court ordered appropriations."

No matter how often the Governor may say it, the plaintiffs do not seek any "court ordered appropriation." Nor do they believe it is required. By itself, a declaratory judgment is meaningful relief, even if there were never an increase in funding of the EBF. *Cf. Rossito-Canty v. Cuomo*, 86 F. Supp. 3d 175 (E.D.N.Y. 2015) (Indicating Plaintiffs would prevail on suit to require action by Governor, but giving Governor

opportunity to comply with the law). A judgment that plaintiffs and their students were deprived of their rights would go part way to removing the stigma placed on them. Furthermore, it would be meaningful relief if the Governor were to submit a budget or budgets designed to achieve the full funding of the EBF. As stated above, the General Assembly depends on the Governor's budget to determine how much education funding there should be and the Governor's willingness to accept such an increase in any budget approved by the General Assembly.

The Governor is also mistaken that the claim here is like the claim in *People ex rel. Sklodowski v. State of Ill.,* 182 Ill.2d 220 (1998), to provide a funding plan for the payment of State pensions. There, the Court held that the claimants were only entitled to the benefits when they became due and owing. The EBF funding is not funding for a rainy day, but money needed now. For the students going through K-12 education, it is now or never for the State to deliver. Just as there is a right to a public pension at the time of retirement (even under *Sklodowski*) there is a right to an education during a student's K-12 years. If anything, *Sklodowski* is a strong statement in favor of requiring funding of K-12, and the irreparable loss associated with the underfunding increases with every passing year.

VIII. The political question doctrine which barred relief in *Edgar* does not bar the relief sought by plaintiffs here.

None of the six factors in *Baker v. Carr,* 369 U.S. 186 (1962) bar the resolution of this case. Plaintiffs have previously addressed this point, but perhaps a restatement of it is proper here. First, there is no textual commitment of the funding of public education exclusively to the legislative branch. As set forth above in discussing *Leetaru*, in addition to the State Board of Education, the Governor has an important constitutional role, which

he has failed to carry out here. Second, and the key distinction since *Edgar* was decided, there are clear and discoverable standards both as to the content of a high-quality education and the specific funding required for it. Third, there is no lack of respect for a coordinate branch of government. In the Evidence Based Funding Act, the General Assembly has declared the constitutional right and the appropriate level of funding, and plaintiffs seek to achieve the purposes set out in that law. The State Board of Education has also declared a constitutional right as well – and called for full EBF Funding.

And unlike in *Edgar*, no initial policy determination is lacking. Unlike in *Edgar*, that policy determination has *already been made* by the legislative branch and there is no "unusual need for unquestioning adherence to a political decision already made." *Baker*, 369 U.S. at 217. Nor is there "the potentiality of embarrassment," *id.*, from multifarious pronouncements as to what the districts and students require. The General Assembly and State Board agree. It is the Governor who is acting outside the authority of his office. It is unfortunate to see the Governor, represented by the Attorney General, launch an attack on the Education Based Funding Act, instead of performing their duties by executing the laws.

The Governor justifies himself by saying that the high-quality institutions referred to in Article X are merely a goal, not an obligation binding on the State. Yet the relevant provision is clear: "The State *shall* provide an efficient system of high-quality educational institutions…[.]" Ill. Const., Art. X (emphasis supplied). The word "shall" denotes a duty. *Fumarolo v Board of Education,* 142 Ill.2d 54 *,* 96 (1990). As stated above, *Edgar* itself makes clear that this is a mandatory duty ("The remaining question under section 1 of the education article pertains to its guarantee of a system of 'high

quality' educational institutions and services. There is no dispute as to the nature of this guarantee in the abstract."). What is guaranteed is no longer abstract, as it was at the time of *Edgar,* but it is the education now defined and required by the State and declared by the General Assembly to be a constitutional right.

The Governor further tries to justify himself by saying that funding of the EBF in fiscal year 2021 will require a dollar-for-dollar reduction in human services. This is not a responsible statement, as the Governor should know, and it is unseemly to pick on human services as his political card. The budget is not a zero-sum game, or fixed in the stars, and the Governor is expected to determine not only the expenditures but also the revenue the State needs. The Evidence Based Funding Act does not prohibit the Governor from seeking more revenue to provide a constitutionally adequate education. Furthermore, the $350 million in new money and property tax relief would take up only a small portion of a general funds budget of $41.6 billion.

The Governor's budget does give priority to funding of *some* constitutional obligations, at least to public employees. There is $9.4 billion set aside to meet the constitutional obligations to these employees, as declared by this Court in *Heaton v. Quinn, supra.* A budget is a statement of the Governor's priorities, and the Governor has made clear that the funding of the EBF is not a priority or required or likely to do any good. It is disturbing if not cynical for the Governor to treat the human services budget as the only possible source for funding of the EBF. Plaintiffs submit that a declaratory judgment by itself will clarify for the Governor his obligation to submit a budget that reflects the obligations not just to pensioners but to the young people of Illinois.

IX. The General Assembly has properly determined that funding of the EBF will increase student achievement.

In pages 61 through 63 of the opposition brief, the Governor denies that funding the EBF will improve educational outcomes and disputes the need to fund the EBF. On a *motion to dismiss for failure to state a claim,* the Governor invites this Court to reject the General Assembly's declaration of a relationship between increased State funding and student achievement. But this is the finding of the *General Assembly,* and it is entitled to the deference of this Court. As set out in the recent April 2021 report of Advance Illinois:

> Money matters in education funding – significant, sustained investment in evidence-based supports improves student outcomes and boosts the economy, while cuts to education funding have the opposite effect. A strong and growing body of research demonstrates the relationship between education funding and student outcomes…
>
> States that have increased educational investments for their highest need students since the 1970s have seen noteworthy returns on those investments in the form of improved academic performance and decreasing income-based achievement gaps in math and reading. Beyond impacts on test scores, increased resources for education have been tied to long term positive outcomes for students, including higher graduation rates, greater educational attainment and higher adult earnings. Gains are largest for students from low-income households….

Advance Illinois, 7.

The amicus brief filed in this case in support of plaintiffs from the Education Law Center reviews the academic literature that strongly supports a relationship between increased funding and academic achievement by lower income students. *See also*, C. Kirabo Jackson, *Does School Spending Matter? The New Literature on an Old Question*, *in An Equal Start: Policy and practice to Promote Equiality of Opportunity for Children* (2020), Available at https://works.bepress.com/c_kirabo_jackson/38/ (last viewed, April

26, 2021).There may or may not be a "one-to-one" relationship (whatever the Governor means by that) but as the report by Advance Illinois states:

> On its own increased funding is a necessary but not sufficient condition for bringing about all of the positive impacts [in terms of student achievement]… dollars must also be spent equitably at the school and districts level on evidence-based practices.

Advance Illinois, 7.

The last point made by Advance Illinois is significant; the EBF is not like the old Foundation grant, which had no legislatively-determined relationship to educational outcomes. The EBF is targeted to be spent on educational practices designed to raise test scores and over all student achievement.

The State Board of Education has also called for full funding of the EBF, the full $7.2 billion. In fiscal year 2021, the State Board of Education sought an additional $500 million in funding for EBF. The State Board of Education has affirmed repeatedly the relationship found by the General Assembly. It is unfortunate that the Governor chose in footnote 21 to cherry pick statistics to make it appear that the limited increase in EBF funding makes no difference. In comparing Batavia and Cahokia, the Governor fails to note that these districts have far different concentrations of low-income students. Batavia's low-income population is 17 percent, while Cahokia's is 92 percent, so an increase of 12 percent in funding for low-income students in Cahokia is not likely to make much of a dent as it would in Batavia. Aside from picking out two districts, the Governor misses the point that the proficiency rates for all these low-income students is unacceptable to the General Assembly and the reason that it enacted the Evidence Based for Student Success Act.

Plaintiffs are baffled by the Governor's argument that: (1) family income determines student achievement, and (2) therefore the EBF need not be fully funded. But the very purpose of the EBF is to address the disparity between low-income students and those who are middle to high-income. The disparity is not a reason to abandon the EBF but instead to fund it. As the General Assembly declares:

> When fully funded under this Section, every school shall have the resources, based on what the evidence indicates is needed, to:
>
> * * *
>
> (C) reduce, with the goal of eliminating, the achievement gap between at-risk and not at-risk students and not be reducing standards…

105 ILCS 5/18-8.15(a)(1)(C).

The General Assembly does not assume the gap to go away but believes that the gap *can be reduced* if the State provides enough funding for the "high quality educational institutions" that Article X requires.

X. Plaintiffs have stated a claim under the equal protection clause.

The Governor claims that the disparity in funding of the EBF is still rationally related to the State's goal of local control even if there is no place in State law where that goal is set out. The expressed goal of the State is student achievement of the Learning Standards. It is hard to understand how disparity in funding of the State's required education is rationally related to the goal of local control. Of course, local districts still hire teachers; but they do not decide what to teach or can adjust spending downward to meet for an inferior type of education. Standards-based education has finished off "local control" as an excuse not to provide the money for the education that the State and not the local districts now require.

The Governor concludes his brief with the suggestion that perhaps the Court might have to declare the Learning Standards to be unconstitutional, to save the goal of local control. The Governor appears to believe that if it comes to a choice, going back to local control by local districts, which are not even mentioned in Article X, is a greater constitutional priority than whether the students in this State receive an adequate education. For the Court to declare the state-wide Learning Standards to be unconstitutional because the Governor does not wish to fund them, or believes funding will do no good, is a course of action that should be shunned.

The Governor points out that plaintiffs have not brought a claim of *intentional* racial discrimination. That is true. But plaintiffs are in full agreement with the dissenting opinion in the Appellate Court. The claim that money does no good for these children applies to children who disproportionately belong to a racial minority. While it may be difficult to bring a claim of intentional racial discrimination, which raises significant evidentiary hurdles, the Governor's rejection of the rights of plaintiffs and their students has a profoundly discriminatory racial impact.

Finally, the Governor seems perplexed that plaintiffs offer up no specific law to be declared unconstitutional. But it is the Governor who is carrying out the laws of the State in a discriminatory manner. He is depriving the plaintiffs and their students of the high-quality institutions which other districts have. In doing so, in violation of the Equal Protection Clause, Governor is acting beyond the proper confines of his office to execute the laws and provide every district with its "adequate capacity" as determined by the EBF. The plaintiffs are entitled to prospective relief in order to confine the Governor to

his obligations as an executive and to submit a budget and future budgets designed to achieve the constitutional rights of the plaintiffs.

CONCLUSION

For these reasons, plaintiffs seek the reversal of the judgment of the Circuit Court and Appellate Court and remand of this case to the Circuit Court for the entry of the declaratory judgment in plaintiffs' favor and for such further relief as may be necessary.

Respectfully submitted,

/s/ Thomas H. Geoghegan

Thomas H. Geoghegan
Michael P. Persoon
Will Bloom
Despres, Schwartz & Geoghegan, Ltd.
77 West Washington Street, Suite 711
Chicago, Illinois 60602
(312) 372-2511
tgeoghegan@dsgchicago.com
mpersoon@dsgchicago.com
wbloom@dsgchicago.com

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 18 pages.

/s/ Thomas H. Geoghegan

NOTICE OF FILING AND PROOF OF SERVICE

On April 28, 2021, I filed the attached Brief, via electronic filing, with the Illinois Supreme Court and caused to be served a copy on counsel for J.B. Pritzker in this action, Richard Huszagh, at his email address, RHuszagh@atg.state.il.us. Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

April 28, 2021 — Date

/s/ Thomas H. Geoghegan — Thomas H. Geoghegan