

**COURT OF APPEALS
STATE OF NEW YORK**

CAMPAIGN FOR FISCAL EQUITY, INC., AMINISHA BLACK, KUZALIWA BLACK, INNOCENCIA BERGES-TAVERAS, BIENVENNIDO TAVERAS, TANIA TAVERAS, JOANNE DEJESUS, ERYCKA DEJESUS, ROBERT JACKSON, SUMAYA JACKSON, ASMANHAN JACKSON, HEATHER LEWIS, ALINA LEWIS, SHAYNA LEWIS, JOSHUA LEWIS, LILLIAN PAIGE, SHERRON PAIGE, COURTNEY PAIGE, VERNICE STEVENS, RICHARD WASHINGTON, MARIA VEGA, JIMMY VEGA, DOROTHY YOUNG, and BLAKE YOUNG,

Plaintiffs-Appellants

- against -

THE STATE OF NEW YORK, GEORGE E. PATAKI, as Governor of the State of New York, and MICHAEL H. URBACH, as Tax Commissioner of the State of New York,

Defendants-Respondents.

New York County
Index No. 93/111070

**BRIEF OF PROPOSED *AMICI CURIAE*
NEW YORK STATE SCHOOL BOARDS ASSOCIATION, INC.
AND NATIONAL SCHOOL BOARDS ASSOCIATION**

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INTEREST OF THE *AMICI CURIAE*

The New York State School Boards Association, Inc. (NYSSBA) is a not-for-profit membership organization incorporated under the laws of the State of New York, located at 24 Century Hill Drive, Suite 200, Latham, New York. Pursuant to New York’s Education Law, NYSSBA has a statutory responsibility to devise “practical ways and means for obtaining greater economy and efficiency in the administration of school district affairs and projects” on behalf of public school districts of the State of New York. (N.Y. Educ. L. §1618). NYSSBA represents approximately six hundred ninety-five (695) of seven hundred and forty-two (742) public school districts in New York State, or approximately, ninety-four percent (94%) of all New York public school districts.

NYSSBA has a long-standing interest in educational policy affecting the administration and operation of public schools and has appeared as an *amicus curiae* before this court and others in a number of both state and federal proceedings affecting such issues, including *Winters v. The Board of Educ. of the Lakeland Cent. School Dist.*, ___ N.Y.2d ___, N.Y. Slip Op. 09341 (2002); *Davis v. Mills*, 98 N.Y.2d 120 (2002); *In Matter of Beau II*, 95 N.Y.2d 234 (2000); *Vestal Public Employees Assn. v. Public Employment Relations Board*, 94 N.Y.2d 409 (2000); *Uhr v. East Greenbush Cent. School Dist.*, 94 N.Y.2d 32 (1999); *Matter of Scanlan v. Buffalo Public School System*, 90 N.Y.2d 662 (1997); *Chainini v. Board of Education of the City of New York*, 87 N.Y.2d 370 (1995); *Newark Valley Central School Dist. v. Perb*, 83 N.Y.2d 315 (1994); *Lloyd v. Grella*, 83 N.Y.2d 537 (1994), *recons. denied* 83 N.Y.2d 1001 (1994); and *Germantown Cent. School Dist. v. Clark*, currently pending before this court.

At the federal level, NYSSBA has appeared as an *amicus* before the U.S. Supreme Court in *Good News Club v. Milford Central School Dist.*, 533 U.S. 98 (2001); *Mitchell v. Helms*, 530

U.S. 793 (2000); *Lamb's Chapel v. Center Moriches School Dist.*, 508 U.S. 384 (1993), and before the U.S. Court of Appeals for the Second Circuit in *Board of Education of the Pawling CSD v. Schutz*, 290 F.3d 476 (2nd Cir. 2002); *Polera v. The Board of Education of the Newburgh Enlarged City School Dist.*, 288 F.3d 478 (2nd Cir. 2002); *Murphy v. Arlington Cent. School Dist. Board of Education*, 297 F.3d 195 (2nd Cir. 2002); *Full Gospel Tabernacle v. Community School Dist. No. 27*, 164 F.3d 207 (2nd Cir. 1997); *cert. denied*, 523 U.S. 1074 (1998); *Russman v. Board of Education of the Enlarged City School Dist. of Watervliet*, 85 F.3d 1050 (2nd Cir. 1996); *Hsu v. Roslyn Union Free School Dist.*, 85 F.3d 839 (2nd Cir. 1996), *cert. denied*, 519 U.S. 1040 (1996); *Cullen v. Fliegner*, 18 F.3d 96 (2nd Cir. 1994), *cert. denied*, 513 U.S. 985 (1994); *Travis v. Owego-Apalachin School Dist.*, 927 F.2d 688 (2nd Cir. 1991).

NYSSBA also appeared as an *amicus* before the court below and was a plaintiff in *Campaign for Fiscal Equity v. Marino*, 87 N.Y.2d 235 (1995); *New York State School Boards Association v. New York State Board of Regents*, Sup. Ct. Albany County, Harris, J. (May 31, 1996); and one of the original plaintiffs in *Board of Education of the Kiryas Joel Village School Dist. v. Grumet*, 512 U.S. 687 (1994).

The National School Boards Association (NSBA) is a nonprofit federation of state associations of school boards from throughout the United States, located at 1680 Duke Street, Alexandria, Virginia. It represents the national 95,000 school board members, who in turn, serve more than 90 percent of the K-12 students in the nation. Adequacy of funding is probably the single most important issue in education today. NSBA has consistently supported school finance approaches that foster excellence in student achievement, teaching and overall operations.

NYSSBA and NSBA (the *amici*) submit this brief on the grounds that it would invite the Court's attention to law and arguments that might otherwise escape its consideration and that it

would be of special assistance to this court. The appropriateness of any remedy imposed is of particular interest to them, both with respect to correcting the constitutional violation at issue herein, and ensuring the right of **all** New York public school students to receive a sound basic education without impairing the ability of school districts that presently serve their students well to continue to do so.

STATEMENT OF THE ISSUES

I. Whether the State's learning standards constitute the proper point of reference for determining the adequacy of the State's system for funding public education?

The proposed *amici* respectfully submit that the answer is yes.

II. Whether the issues presented by this case require remedial action from this court?

The proposed *amici* respectfully submit that the answer is yes.

STATEMENT OF THE FACTS

The proposed *amici curiae* will not recite a separate statement of facts, except as hereinafter specifically cited within the text of their brief, but will defer to the facts as outlined in the brief submitted by Appellants, Campaign for Fiscal Equity, Inc., and as set forth in the Record on Appeal.

ARGUMENT

INTRODUCTION

The central issue before this court is whether New York's present system for funding public education adequately provides all children throughout the State a real and meaningful opportunity to obtain a sound basic education, as required by the New York State Constitution and this court's interpretation of it. In the balance is the future of generations of children to come regarding their ability to access, on an on-going basis, the basic resources that will enable them to become productive citizens and guarantors of the democratic principles upon which this State and the nation were founded.

The proposed *amici* submit this brief because of their interest in ensuring the right of all children in New York's public schools to obtain a sound basic education, and the continued ability of public school districts which presently serve their students well, to do so into the future.

I. THE STATE'S LEARNING STANDARDS CONSTITUTE THE PROPER POINT OF REFERENCE FOR DETERMINING THE ADEQUACY OF THE STATE'S SYSTEM FOR FUNDING PUBLIC EDUCATION.

One of the difficulties in adjudicating the adequacy of the State's system for funding public education relates to the identification of minimum standards of educational quality and quantity that define a sound basic education. In the past, this court has opted to define the term in relation to the acquisition of skills necessary to function as productive civic participants, including the ability to vote and serve on a jury. (*Campaign for Fiscal Equity v. State of New York*, 86 N.Y.2d 307, 316 (1995); *Board of Educ. Levittown UFSD v. Nyquist*, 57 N.Y.2d 27, 48

(1982)). Other courts have elaborated further on the essentials of a minimally adequate education to include, for example,

sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization...knowledge of economic, social and political systems to enable the student to make informed choices;...and levels of academic and vocational skills to enable public school students to compete favorably...in academics or in the job market. (See, Underwood, *School Finance Adequacy as Vertical Equity*, 28 Univ. of Michigan Journal of Law Reform 493, 513 (citations omitted)).¹

Close examination of New York's learning standards show they embody the above referenced essentials of an adequate basic education. For example, in the area of English/language arts, the learning standards require that students learn to:

listen, speak, read and write for information and understanding...read and listen to oral, written and electronically produced texts...and develop an understanding of the diverse social, historical and cultural dimensions the texts...represent...listen, speak, read and write for critical analysis and evaluation,... and for social interaction. (8 NYCRR §100.1(t)(1)(i)).

As to career development and occupational studies, the learning standards require that:

students be knowledgeable about the world of work, explore career options, and relate personal skills, aptitudes, and abilities to future career decisions...demonstrate how academic knowledge and skills are applied in the workplace and other settings...mastery of the foundation skills and competencies essential for success in the workplace...[and that] students who choose a career major will acquire the career-specific technical knowledge/skills necessary to progress toward gainful employment, career advancement and success in postsecondary education. (8 NYCRR §100.1(t)(1)(vii)).

Regarding social studies, students must:

use a variety of intellectual skills to demonstrate their understanding of major ideas, eras, themes, developments and turning points in the history of the United States and New York...world history...how the United States and other societies

¹ According to the court below, the acquisition of these minimal essential skills does not require an education beyond the eighth or ninth grade level. However, that determination is inconsistent with the State's compulsory education laws which require children to attend full-time instruction generally until the last day of the school year in which they reach the age of 16, (N.Y. Educ. L. §3205(1)(c)), and in city and union free school districts of more than 4,500 inhabitants until the last day of the school year in which they become 17 if they are not employed, at the discretion of the school board. (N.Y. Educ. L. §3205(3)).

develop economic systems and associated institutions to allocate scarce resources...the necessity for establishing governments; the governmental system of the United States and other nations; the United States Constitution; the basic civic values of American constitutional democracy; and the roles, rights and responsibilities of citizenship, including avenues of participation. (8 NYCRR §100.1(t)(1)(iii)).

In the areas of mathematics, science and technology, students must be able to:

use mathematical analysis, scientific inquiry and engineering design, as appropriate, to pose questions, seek answers and develop solutions...access, generate, process and transfer information using appropriate technologies...understand mathematics and become mathematically confident...by applying mathematics in real-world settings...understand the relationships and common themes that connect mathematics, science and technology and apply [them] to these and other areas of learning...(8 NYCRR §100.1(t)(1)(ii)(a),(b),(c)).

Furthermore, the learning standards are also consistent with the goals of every educational reform movement throughout this nation's history. All of these movements have established education as the means for shaping society and preserving freedom and individual rights, as a level for social reform, and as a means to teach individuals to use their minds and enable them to become self-sufficient. (*See*, Ravitch and Viteritti, *Making Good Citizens, Education and Civil Society*, Yale Univ. Press, New Haven & London (2001)). All have understood that education and democracy are connected, and that the intelligence, resourcefulness and character of its citizens are essential to the survival of a democratic society. (*Id.* at 24-27).

In the past, this court has been hesitant to adopt the learning standards to define what constitutes a sound basic education because of concerns that they “exceed notions of a minimally adequate or sound basic education” and that “some are also aspirational.” (86 N.Y.2d 307, 317). However, since the last time this court visited this issue, the learning standards have come to define not what students should aspire to, but the minimum level of “knowledge, skills and

understandings” that children **must** acquire “as a consequence of instruction and experience” in order to earn a public high school diploma in the State of New York. (8 NYCRR §§3.35; 100.1(g),(t); 100.2(ee); 100.5). Therefore, it is only appropriate that a determination as to whether the State’s system for funding public education be based on whether that system provides students with a meaningful and real opportunity to acquire the skills and knowledge they need in order to obtain a New York State diploma.

In addition, the State is a recipient of federal educational funds under the Elementary and Secondary Education Act (ESEA)². (20 U.S.C. §6301 *et seq.*). Title I of that law, which provides funds for improving the academic achievement of the disadvantaged, requires that as a condition for the receipt of such funds states must develop challenging and rigorous academic content standards in language arts, mathematics and science, and assessments that measure student achievement linked to those standards. The content standards must, in relevant part, specify and measure what children are expected to know and be able to do. All children must be proficient on those standards by the end of the 2013-14 school year. (20 U.S.C. §6311(b)(1)(D)). The State has identified the learning standards as its measure for compliance with this federal requirement.

Moreover, every school and school district must meet adequate yearly progress objectives regarding the progress of students toward the attainment of proficiency of the learning standards. Dire consequences attendant to the failure of students to meet those objectives ultimately include alternative governance arrangements for any such school or district not limited to turning over their operation to the state or the abolishment of a district. (20 U.S.C. §§6311(b)(2)(G); 6316).

² The most recent reauthorization of the Elementary and Secondary Education Act is more commonly known as the No Child Left Behind Act of 2001.

Schools that fail to meet the adequate yearly progress targets established by the State can be identified as either in need of improvement, corrective action or restructuring depending on the number of consecutive school years they fail to meet those targets. (20 U.S.C. §6316). Currently, the State has identified over 400 public schools in need of improvement or corrective action, located in 66 separate school districts throughout the State.

Based on the above, the *amici* respectfully submit that the learning standards can no longer be thought of as aspirational. Instead, they define the minimum skills and knowledge students are expected to acquire as a result of receiving a public education in the State of New York, and for the State to receive federal educational funds under the ESEA. Therefore, the responsibility of the State to make available educational opportunities which enable children to exercise their right to obtain a sound basic public education requires that the State provide the resources necessary for all children residing in New York to acquire those skills and knowledge.

The *amici* further submit that the large percentage of schools and school districts identified as in need of improvement or corrective action evinces a systemic failure regarding the provision of services at a level that meets statewide minimum standards of educational quality and quantity established by the State. This fact directly bears on the question regarding the adequacy of the State's system for funding public education and the availability of resources necessary to meet those standards. There can be only one answer – that the State's system for funding public education is inadequate.

II. THE ISSUES PRESENTED BY THIS CASE REQUIRE REMEDIAL ACTION FROM THIS COURT.

These are hard financial times and this court has noted that the primary responsibility for determining “the amounts, sources, and objectives of expenditures of public moneys for

educational services” that are “within the financial capabilities of our State’s taxpayers” rests with the legislative and executive branches of government. (57 N.Y.2d at 38-39, 49 fn9 (1982). However, the State Constitution mandates that “[t]he Legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated” (N.Y. State Const. Art. XI, §1), and this court has interpreted that mandate to grant all children a meaningful right to a public education that entails the opportunity to obtain a sound basic education. (86 N.Y.2d at 315-16 (1985); 57 N.Y.2d at 48).

Financial difficulties do not trump constitutional mandates and constitutional guarantees must be protected and upheld equally both in times of wealth and scarcity. Constitutional mandates must be met and the right of children to obtain a sound basic public education deserves no less. (See, *DeRolph v. The State of Ohio*, 97 Ohio St.3d 434; 780 N.E.2d 529 (2002). For as stated by the U.S. Supreme Court:

...the public schools [are] a most vital civic institution for the preservation of a democratic system of government’ and...the primary vehicle for transmitting ‘the values on which our society rests.’...In sum, education has a fundamental role in maintaining the fabric of our society. (*Plyer v. Doe*, 457 U.S. 202, 221 (1982) (citations omitted)).

Thus, it is appropriate for this court to adjudicate whether actions taken by the Legislature and the executive in devising the State’s system for funding public education conform to the constitutional mandate at issue herein. (*see*, 57 N.Y.2d at 39).

Although, as noted by the trial court in this case, it is appropriate for a court to trust that the Legislature will act to properly remedy a constitutional violation, history clearly depicts a deep-seeded reluctance on the part of the State to institute reforms to its system for financing public education. Excerpts from public documents attached for the court’s convenience as

Appendix A to this brief show that since the early 1900s there have been a myriad of task forces, all of which have agreed on the need to reform that system.

In the 1920s, a Joint Legislative Committee on Taxation and Retrenchment, known as the Davenport Committee, reported that:

The state is not meeting its obligation to provide a reasonable standard of free education for every child in the state...This is not because the local districts in some cases have not exerted themselves to furnish good education, in fact, in many school districts the tax burden has risen alarmingly...It is for this reason that the problem of free education in the State of New York is now primarily a problem of finance..."

It then recommended that the State provide adequate financial resources to pay for the state minimum standard, and that the tax burden to meet these costs not be heavier in proportion to the taxpaying ability of the various sections of the State. Although not quite the same, this concept of regional differentiation is not inconsistent with that portion of the order of the Supreme Court in this case that legislative reforms to the system for funding public education take into account variations in local costs. (*See, Campaign for Fiscal Equity v. New York State*, 187 Misc.2d 1, 115 (2001)).

In the 1960s, a Joint Legislative Committee on School Financing, also known as the Diefendorf Committee, similarly made proposals for a substantial overhaul of the state-aid formula which also went unheeded. The same occurred regarding the recommendations of the Committee on the Quality, Cost and Financing of Elementary and Secondary Education, known as the Fleischmann Commission, appointed by then Governor Nelson A. Rockefeller.

Of particular relevance are the efforts of Governor Hugh Carey during the 1970s to institute a system that would provide reliability and predictability and take into account regional differentials, not unlike the parameters established by the order of the Supreme Court in this case. Even after this court issued its *Levittown* decision upholding the constitutionality of the

State's school finance system against allegations that the system was not equitable, Governor Carey continued to maintain that the State still bore a responsibility for reforming its school aid formula.

More than two decades later, and at least one more Commission (the 1988 New York State Commission on the Distribution of State Aid to Local Districts known as the Salerno Commission), there has been no real reform to the State's school finance formula, which current Governor George Pataki has described as a "dinosaur." The State's repeated failure to effectuate needed reforms perpetuates a system that does not provide children residing in New York an adequate opportunity to obtain a sound basic education.

Mindful of the role of the Legislature and the executive, the Supreme Court below proceeded to prescribe guiding principles to help those branches of government steer reforms that would comply with the constitutional mandate. Under those principles, any reforms to the State's system for funding public education may not deprive any school district of the resources necessary to provide all public school students the opportunity for a sound basic education. They also must take into account variations in local costs, provide sustained and stable funding that promotes long-term planning by schools and school districts, and make understandable to the public the distribution of school aid. (187 Misc.2d at 115).

As set forth in the accompanying affidavit supporting the proposed *amici's* Motion for Leave to File a Brief, the guiding principles adopted by the Supreme Court in this case encompass many long-standing principles of school funding adopted by NYSSBA's membership, published in a booklet describing its "Positions, Statements and Bylaws". (*See*, Exhibit A to Affidavit of Jay Worona in Support of Motion for Leave to File a Brief *Amici Curiae*).

Further mindful of the difficulties involved in effectuating adequate reforms, the State Supreme Court in this case urged that the State should ascertain “to the extent practicable, the actual cost of providing a sound basic education in districts around the State.” (*Id.*). In this context, this court might want to take judicial notice that, as reported in the media, the Appellants and the New York State School Boards Association have commissioned an independent study to determine what it actually costs to provide the resources that each school needs to enable its students to meet the learning standards. More importantly, the study will serve to identify the factors that must be considered in ascertaining that cost. These factors also will prove helpful to the Legislature and the executive in the future to ensure their actions conform to the constitutional mandate at issue herein. The study will be conducted by the American Institutes for Research (AIR) and Management Analysis & Planning (MAP), Inc. A copy of the executive summary of the “Proposal for Determining Adequate Resources for New York Public Schools” is included as Appendix B to this brief, for the court’s convenience.

For the above reasons, the proposed *amici curiae* respectfully request that this court reverse the ruling of the court below and uphold the order of the Supreme Court in this case. Otherwise, the State constitutional right to a sound basic education becomes merely an empty promise which perpetrates a great injustice upon future generations.

CONCLUSION

For the foregoing reasons, the proposed *amici curiae* respectfully request that this court reverse the Opinion of the court below, uphold the order of the Supreme Court and provide such other and further relief as to this court may seem just and proper.

Dated: February 3, 2003
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