

**IN THE INDIANA COURT OF APPEALS**

Cause No. 49A02-0702-CV-00188

PHILIP-ANTHONY BONNER, a minor, )  
by his parents and next friends, Joseph )  
and LaTanya Bonner, *et al.*, )  
On Behalf of Themselves and All Others )  
Similarly Situated, )

Appellants/Plaintiffs, )

v. )

MITCH DANIELS, Governor of the State )  
of Indiana and Co-Chair of the Education )  
Roundtable, SUELLEN K. REED, Indiana )  
State Superintendent of Public Instruction )  
and Chair of the State Board of Education )  
and Co-Chair of the Education Roundtable, )  
and the INDIANA STATE BOARD OF )  
EDUCATION, )

Appellees/Defendants. )

Appeal from the Marion Superior Court.

Trial Court Case No. 49D010604PL016414

The Honorable Cale J. Bradford, Judge

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**BRIEF OF AMICI CURIAE NATIONAL ACCESS  
NETWORK, EDUCATION LAW CENTER, AND THE  
RURAL SCHOOL AND COMMUNITY TRUST, INC.  
IN SUPPORT OF APPELLANTS**

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## STATEMENT OF AMICI CURIAE

The National ACCESS Network (ACCESS) is a non-profit center at Teachers College, Columbia University, in New York. Through its network of concerned citizen advocates nationwide, ACCESS promotes access to meaningful educational opportunities for children by: conducting research; providing analysis of key education issues; developing effective strategies for litigation, use of funds, and public engagement; and, strengthening the national movement of advocates who support adequate funding for public education and improved public schools in all States. ACCESS also maintains an extensive website on school funding litigations and related matters at [www.schoolfunding.info](http://www.schoolfunding.info).

Education Law Center (ELC) is a non-profit advocacy organization in Newark, New Jersey established in 1973 to advocate on behalf of public school children for access to an equal and adequate education under state and federal laws. ELC works to improve educational opportunities for low-income students and students with disabilities through policy initiatives, research, public education, communications, and legal action. ELC represents the plaintiff school children in the *Abbott v. Burke* school finance litigation, and continues to advocate on their behalf to assure effective and timely implementation of the educational programs and reforms ordered by the New Jersey Supreme Court in that case. ELC also provides information and technical assistance to attorneys and advocates in other States, including support for litigation seeking to improve school funding and expand preschool education for disadvantaged children, and to reform special education programs for children with disabilities.

The Rural School and Community Trust, Inc. (Rural Trust) is a national non-profit organization dedicated to promoting equal educational opportunity and improving learning for students who attend public schools, especially students who attend rural schools. The Rural Trust has particular expertise in the field of school finance policy and law. The Rural Trust also

operates the Rural Education Finance Center, which: (1) sponsors rigorous scholarly legal and education research on school finance issues; (2) maintains expertise on current legal and policy developments involving school finance systems; (3) provides technical assistance to lawyers and policy makers in the field of school finance policy and law; and (4) files *amicus curiae* briefs in state litigation involving school finance. The Rural Trust has participated as *amicus curiae* in *Abbeville v. State*, 93-CP-31-0169 (Ct. of Common Pleas, Lee County, S. C. Dec. 29, 2005); *Maryland State Board of Education v. Bradford*, Nos. 94340058/CE189672 and 95258055/CL202151 (Md. Cir. Ct. Balt. City June 9, 2005); *Lake View Sch. Dist. No. 25 v. Huckabee*, 91 S.W.3d 472 (Ark. 2002); *Leandro v. State of North Carolina*, 488 S.E.2d 249 (N.C. 1997); and *Hoke County Board of Education v. State of North Carolina*, 599 S.E.2d 365 (N.C. 2004).

### **QUESTIONS ADDRESSED**

*Amici* will address the following questions:

1. Whether plaintiffs' claims (1) that the Education Clause imposes an affirmative duty to provide an adequate education and (2) that defendants are failing in their constitutional duty are justiciable and within this Court's role under the separation of powers doctrine.
2. Whether courts are able to discern and apply judicially manageable standards in the education adequacy cases analogous to this case.

### **STATEMENT OF FACTS ALLEGED**

Plaintiffs' Complaint alleges facts that, if proven at trial, would substantiate their claims that, first, the Education Clause of the State Constitution establishes a duty that the State must provide an adequate contemporary educational opportunity that enables the State's children to become capable citizens and workers, and, second, the current system of education finance fails to provide the constitutionally mandated educational opportunity. Plaintiffs allege historical facts and current educational standards that would provide sufficient evidence on which a court could

declare the meaning of the State Constitution’s Education Clause, as most other state courts have done. (App. pp. 22-29, ¶¶ 8-26.)

Plaintiffs also allege “outcomes” and “inputs” and causal links to aspects of the State’s system of education finance that would establish a violation of the State’s duty to educate its children, if proven at trial. Alleged low-level achievement among thousands of students on numerous measures (App. pp. 39-54, ¶¶ 58-77), lack of availability and quality of instructional programs, which plaintiffs allege are essential (App. pp. 54-57, ¶¶ 78-86), and weaknesses in the current funding scheme that allegedly deprive schoolchildren of these programs (App. pp. 29-38, 56-57, ¶¶ 27-56, 83-86), if proven at trial, would provide sufficient evidence to support a declaration that the State is violating its affirmative constitutional duty.

Plaintiffs seek, *inter alia*, two declaratory judgments. First, they seek a judgment declaring that the Indiana Constitution imposes a duty to provide an education that prepares the State’s children for capable citizenship and work in the contemporary world. Second, they seek a judgment declaring that defendants are not meeting that constitutional duty because the education finance system, as affected and implemented by defendants, fails to provide the requisite education. (App. pp. 18, 57-58, ¶¶ 1, 88-91.)

Due to the procedural posture of this case, plaintiffs’ alleged facts are taken as true with reasonable inferences drawn in plaintiffs’ favor. *Newman v. Deiter*, 702 N.E.2d 1093, 1097 (Ind. Ct. App. 1998).

### **SUMMARY OF ARGUMENT**

The Indiana courts play a crucial role in the State’s tripartite system of government. The courts duties include interpreting state constitutional clauses and adjudicating claims that those clauses are being violated. While the separation of powers doctrine requires each branch of

government to respect the others' roles, it also compels each branch to shoulder its particular responsibilities.

The courts are also experienced in adjudicating constitutional cases. As has been true of state courts in many similar cases across the country, this Court does not interfere with the legislative and executive branches by hearing the constitutional claims raised here. Moreover, the Court is certainly capable of discerning and applying manageable judicial standards in this case, as other States' courts have done in many similar cases. *Amici* submit this brief to assist the Court in placing its consideration of these questions in the context of what courts in other States have concluded in similar cases.

## ARGUMENT

### **I. PLAINTIFFS' CLAIMS ARE JUSTICIABLE, AS ARE SIMILAR CLAIMS UNDER THE CONSTITUTIONS AND SEPARATION OF POWERS DOCTRINES IN OTHER STATES.**

The Indiana courts have looked to decisions from courts in their sister states for insight into issues they are considering. *See, e.g., Blake v. State*, 860 NE2d 625, 628 (Ind. Ct. App. 2007); *Fowler v. State*, 829 NE2d 459, 469 (Ind. 2005). Other States' courts have done the same, specifically as to justiciability and the separation of powers doctrine in education adequacy cases like this case. *See, e.g., Lake View Sch. Dist. V. Huckabee*, 91 S.W.3d 472, 483 (Ark. 2002) (quoting *Serrano v. Priest*, 557 P.2d 929, 946 (Calif. 1976); *Campbell v. State*, 907 P.2d 1238, 1264 (Wyo. 1995) (quoting *Seattle Sch. Dist. v. State*, 585 P.2d 71, 86-87 (Wash. 1978).

Defendants acknowledged the relevance of the decisions of sister state courts in their brief to the Superior Court. (App. pp. 87-97.) However, they cited only a handful of cases in which the courts failed to exercise their constitutional duty of constitutional interpretation and judicial review, while omitting the vast majority of cases in which the courts fulfilled their responsibilities as a co-equal branch of state government. (App. pp. 88-90.) Defendants'

separation of powers arguments also ignore the important and necessary role of the judicial branch in exercising the powers of judicial review. Judicial review has two essential components – interpreting the constitution and laws for duties and rights established under them and reviewing statutes and their implementation to assess compliance with identified duties and rights. See, e.g., *Nagy v. Evansville-Vanderburgh School Corp.*, 844 N.E.2d 481, 493 (Ind. 2006); *State ex rel. Clark v. Haworth*, 122 Ind. 462, 465-467, 23 N.E. 946, 947-948 (1890).

In an overwhelming majority of States where the courts have been asked to interpret the constitution’s education clause, as plaintiffs seek here, the courts have done so, as discussed below. These interpretations rely extensively on historical records and the intent of the framers of the constitution and, typically, declare that adequate educational opportunities must be provided to all schoolchildren to prepare them for citizenship and employment in contemporary society.<sup>1</sup> In Indiana, the Constitution’s Education Clause imposes an obligation on the State to provide a “general and uniform system of Common Schools” to its schoolchildren, an obligation this Court has the duty to interpret. The courts in other states with the “general and uniform” language have interpreted that language and adjudicated cases similar to this case.<sup>2</sup>

Plaintiffs also ask this Court to remand for trial their claim that the current system of education finance fails to provide the constitutionally mandated educational opportunity. Pls. Br. 1-2, 10, 19-20, 35. Persuasive case law from sister States makes clear that questions concerning both the interpretation of the education clauses of state constitutions and the constitutionality of a State’s system of education finance are fully justiciable and are the essence of the courts’ role

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<sup>1</sup> See, e.g., *Vincent v. Voight*, 614 N.W.2d 388 (Wisc. 2000); *Leandro v. State*, 488 S.E.2d 249, 254-55 (N.C. 1997); *Claremont v. Governor*, 703 A.2d 1353 (N.H. 1997); *Campaign for Fiscal Equity (CFE) v. State*, 655 N.E.2d 661 (N.Y. 1995); *Campbell County Sch. Dist. v. State*, 907 P.2d 1238 (Wyo. 1995).

<sup>2</sup> See, e.g., *Leandro v. State*, 488 S.E.2d 249 (N.C. 1997); *Roosevelt v. Bishop*, 877 P.2d 806 (Ariz. 1994); *Seattle Sch. Dist. No. 1 v. State*, 585 P.2d 71, 92 (Wash.1978).

under the separation of powers doctrine. In most states where the courts have been asked to adjudicate a challenge that the State’s school funding system violates the State Constitution’s education clause, the state supreme court has denied defendants’ Motion to Dismiss and remanded the case for trial on the merits, as discussed below.

**A. STATE COURTS ROUTINELY INTERPRET EDUCATION CLAUSES AND DEFINE THE RIGHTS AND DUTIES THESE CLAUSES IMPOSE.**

Declaring what constitutional duties and rights are – defining and clarifying what constitutional articles mean – is one of the courts’ prime constitutional responsibilities. *See Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803) (“It is emphatically the province and duty of the judicial department to say what the law is.”). The Indiana Supreme Court fulfills its role leading the judicial branch of Indiana State government when it interprets the State Constitution and says what the Constitution means.

Defendants’ argument in the court below – that there is a textually demonstrable constitutional commitment of the school funding issue to the General Assembly (App. pp. 95-97, 100) fails to recognize the scope of the courts’ co-equal role. While the General Assembly and the Governor are responsible for establishing, administering, and funding a “general and uniform system of Common Schools” to “encourage...moral, intellectual scientific, and agricultural improvement” and prepare citizens for “the preservation of a free government,”<sup>3</sup> courts retain the power — and indeed the duty — to decide if the other branches of government have complied with constitutional requirements in carrying out their duties. In fact, this Court has adjudicated

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<sup>3</sup> From the education clause: Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government; it should be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement; and provide, by law, for a general and uniform system of Common Schools, wherein tuition shall without charge, and equally open to all. Ind. Const., art. VIII, § 1.

educational claims, thereby implicitly acknowledging that Article VIII, § 1 of the Constitution creates judicially enforceable obligations and rights regarding education. See Pls. Br. 16.

In the court below, defendants argument misrepresents the relevant case law when it contends that the Indiana education clause language requiring “the General Assembly” to provide a system of schools distinguishes this case from cases in states where the constitutional language requires “the State” to provide a system of schools. (App. p. 100.) In fact, only five of the 50 State Education Clauses specify “the State,”<sup>4</sup> while the remaining 45 Education Clauses require the “General Assembly” or the “legislature” to provide a system of schools.<sup>5</sup> The courts in almost all the 45 states with the “General Assembly” or “legislature” language have found education adequacy and funding equity cases against the State or state officials justiciable.<sup>6</sup>

Moreover, unlike defendants’ assertion that this Court would have to “divine” meaning from the constitution’s language (App. p. 165), the courts of sister states have found plentiful support for interpreting the 18<sup>th</sup> and 19<sup>th</sup> century terminology in most of the education clauses and the few 20<sup>th</sup> century provisions, as well.<sup>7</sup> The Indiana Constitution’s Education Clause offers a richer description of what is constitutionally required than most state constitutions. Other States’ courts have had no difficulty interpreting a variety of terms in the education clauses

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<sup>4</sup> Ark. Const. Art. 14, § 1; Fla. Const. Art. IX, § 1; Geo. Const. Art. VIII, § 1; Haw. Const. Art. X, § 1; Ill. Const. Art. X, § 1.

<sup>5</sup> See the remaining 45 state constitutions’ education clauses.

<sup>6</sup> States with “the General Assembly” or “the legislature” language where the courts have found education claims justiciable include: Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Idaho, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. See [www.schoolfunding.info/states/state\\_by\\_state.php3](http://www.schoolfunding.info/states/state_by_state.php3). In five states, cases have not been filed: Hawaii, Nevada, Utah, Mississippi, and Delaware. *Id.*

<sup>7</sup> See, e.g., cases cited at footnote 8 and in Part II, below.

of their state constitutions to ensure the right to an “adequate” or “suitable” or “efficient” education<sup>8</sup>

Compared to many state education clauses, Indiana’s is more expansive and provides more information for the Court’s delineation of the constitutional standard.<sup>9</sup> Also, the historical underpinnings of the language in the 50 education clauses are well-documented and common to virtually all. The principle belief of the framers of these provisions was that in order to preserve

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<sup>8</sup> State constitutions in other states use a variety of terms in referencing the obligation to provide an enforceable and substantive education consistent with constitutional standards, including:

*North Carolina*: right to “privilege of education” deemed to give rise to right to “sound basic” education with qualitative standards. *Leandro v. State*, 488 S.E.2d 249, 254-55 (N.C. 1997).

*New York*: constitutional mandate that “[t]he legislature shall provide for a system of free Common Schools, wherein all the children of this state may be educated,” creates state obligation to ensure “sound basic education” for all children. *Campaign for Fiscal Equity, Inc. v. State*, 801 N.E.2d 326, 328 (N.Y. 2003).

*Arkansas*: “a general, suitable, and efficient system of free public schools.” *Lake View Sch. Dist. v. Huckabee*, 91 S.W.3d 472, 484 (Ark. 2002).

*Kansas*: “the legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools.” *Montoy v. State*, 102 P.3d 1160 (Kan. 2005).

*South Carolina*: requirement that “the General Assembly shall provide for the maintenance and support of a system of free public education” deemed to guarantee a “minimally adequate education” that meets certain broad substantive academic and vocational standards. *Abbeville County Sch. District v. State*, 515 S.E.2d 535, 540 (S.C. 1999).

*Tennessee*: requirement that “[t]he General Assembly shall provide for the maintenance, support and eligibility standards of a system of free public schools.” *Tennessee Small Sch. Sys. v. McWherter*, 851 S.W.2d 139, 148 (Tenn. 1993).

<sup>9</sup> See, e.g., Ky. Const. § 183 (“The General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the State.”); N.C. Const. art. IX, § 2 (“The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students.”); N.Y. Const. art. X, Section 1 (“The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated.”); S.C. Const. art. XI, § 3 (“The General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in the State and shall establish, organize and support such other public institutions of learning, as may be desirable.”).

a republican form of government and individual freedoms, the people must be educated to be capable citizens.<sup>10</sup>

It is important to note that defendants have been unable to cite any Indiana case that finds deference to legislative judgments is total or absolute. Total deference would virtually eliminate the proper role of the courts as the ultimate interpreters of the Constitution, and could eliminate valuable Constitutional protections through unreviewable legislative fiat.

**B. PROPER SEPARATION OF POWERS CONCERNS COMPEL THE COURT TO INTERPRET THE CONSTITUTION AND DETERMINE WHETHER DEFENDANTS ARE IN COMPLIANCE.**

The separation of powers doctrine, properly applied, acknowledges the respective duties of all three branches of government. High courts in many of this Court's sister states have found not only that separation of powers is no bar to judicial review, but also that it compels them to fulfill their responsibilities and authority, as a co-equal branch of state government, to hear challenges – equivalent to plaintiffs' claims here – to the constitutional adequacy of their States' education finance systems. Over a dozen state high courts that have forcefully rejected separation of powers and political question arguments, concluding it is their duty to declare the meaning of the Constitution and adjudicate plaintiffs' claims. *See* Pl. Bf. pp. 30-32.

Defendants argued in the court below that the separation of powers doctrine views the legislature's educational policy making role as paramount and does not honor the courts' role and responsibilities to determine whether State statutes, and systems implemented by State agencies with delegated authority, are in compliance. (App. pp. 86-87.) Defendants claimed that separation of powers "dictates" that all education finance considerations must be left only to the

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<sup>10</sup> *See generally* Lawrence Cremin, *American Education: The National Experience 1783-1876* (1980); C. Kastle, *Pillars of the Republic: Common Schools and American Society 1780-1860* (1983). ; *See, e.g. McDuffy v. Sec'y of Educ.*, 615 N.E.2d 516 (Mass. 1993) (explaining colonial history and 18<sup>th</sup> century principles, especially freedom, incorporated into the education clause).

legislative branch and that the courts would be “unmoored” and capable of nothing more than “second-guessing” another branch. *Id.* Surely, the Indiana courts are made of sterner stuff.

Not surprisingly, the Indiana Supreme Court has consistently recognized that the courts have a duty to decide issues involving the constitution and laws of the state, even if the determination may affect other branches of the government. *See, e.g., Parker v. State ex rel. Powell*, 133 Ind. 178, 189, 32 N.E. 836, 839 (1892) (“bounden duty . . . to pass upon the validity of the acts of the General Assembly and to declare them void when in conflict with the Constitution of the State.”) The Supreme Court has long adhered to the classic holding of *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 at 177 (2 L. Ed. 60) (1803): “It is emphatically the province and duty of the judicial department to say what the law is.”

Defendants indicated to the court below that only a few aberrant state courts have found school funding systems unconstitutional in recent years. (App. pp. 90-94.) In fact, a significant number of courts in other states have considered whether their school funding systems pass constitutional muster, and most of these decisions have addressed the constitutional “adequacy” of school funding systems. During the past ten years, plaintiffs have prevailed in decisions of the highest courts in education adequacy cases in fourteen states, while defendants have prevailed in only five.<sup>11</sup>

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<sup>11</sup> Specifically, since 1997, plaintiffs have prevailed in: *Montoy v. State*, 102 P.3d 1160 (Kan. 2005); *Hoke County Bd. of Educ. v. State*, 599 S.E.2d 365 (N.C. 2004); *Columbia Falls Elem. Sch. Dist. No. 6 v. State*, 109 P.3d 257 (Mont. 2005); *Campaign for Fiscal Equity, Inc. v. State*, 801 N.E.2d 326 (N.Y. 2003); *Lake View Sch. Dist. v. Huckabee*, 91 S.W.3d 472 (Ark. 2002); *Tennessee Small Sch. Systems v. McWherter*, 91 S.W.3d 232 (Tenn. 2002); *Campbell County Sch. Dist. v. State*, 19 P.3d 518 (Wyo. 2001); *Abbeville County Sch. Dist. v. State*, 515 S.E.2d 535 (S.C. 1999); *Idaho Schs. for Equal Educ. Opportunity v. State*, 976 P.2d 913 (Idaho 1998); *Hull v. Albrecht*, 960 P.2d 634 (Ariz. 1998); *Abbott v. Burke*, 693 A.2d 417 (N.J. 1997); *Leandro v. State*, 488 S.E.2d 249 (N.C. 1997); *Brigham v. State*, 692 A.2d 384 (Vt. 1997); *Claremont Sch. Dist. V. State*, 703 A.2d 1353 (N.H. 1997); *DeRolph v. State*, 677 N.E.2d 733 (Ohio 1997). Defendants have prevailed in: *Nebraska Coalition for Educational Equity and Adequacy v. Heinman*, 731 N.W.2d 164 (Neb. 2007); *Oklahoma Education Association v. State*, 158 P.3d 1058 (Okla. 2007); *Vincent v. Voight*, 614 N.W.2d 388 (Wisc.2000); *Lewis E. v. Spagnolo*, 710

Also, as other states' highest courts have recognized, a determination that any aspect of a funding system violates constitutional standards entails no greater "usurpation" of the authority of the coordinate branches than any other constitutional determination. *See, e.g., Seymour v. Region One Bd. of Educ.*, 803 A.2d 318, 326 (Conn. 2002). Courts accord proper respect to the other branches in education adequacy cases not by concluding that their State constitutions are unenforceable, but rather by deferring to the political branches to correct any constitutional deficiencies if such a determination is made. *See, e.g., id.* at 324; *Hoke County Bd. of Educ. v. State*, 599 S.E.2d 365, 390-91, 393-94 (N.C. 2004); *Roosevelt v. Bishop*, 877 P.2d 806 (Ariz. 1994); *State v. Campbell County Sch. Dist.*, 32 P.3d 325, 332 (Wyo. 2001).

The outcome of this case should be determined by whether plaintiffs adduce evidence proving that the current system of education finance is not providing students educational opportunities that are designed to produce individuals with "knowledge and learning" sufficient for "the preservation of a free government." That evidentiary burden is for a trial on the merits.

## **II. THE COURT IS CAPABLE OF DISCERNING AND APPLYING "JUDICIALLY MANAGEABLE STANDARDS" IN THIS CASE, AS COURTS IN SIMILAR CASES HAVE DONE IN OTHER STATES.**

Defendants, in briefs below, cited only five states (defendants called five "many") whose courts they say "refused to consider" challenges similar to this case. (App. pp. 88-90.) However, the courts in one of those states, Alabama, actually adjudicated the case, including a trial on the merits and a trial court decision affirmed by the state supreme court.<sup>12</sup> Defendants

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N.E.2d 798 (Ill. 1999); and *Pennsylvania Assn. of Rural & Small Schs. v. Ridge*, 737 A.2d 246 (Pa. 1999).

<sup>12</sup> *See Ex parte James (In re Alabama Coalition for Equity (ACE) v. James*, 836 So.2d 813 (Ala. 2002); *Ex parte James (ACE v. James)*, 713 So.2d 869 (Ala. 1997); *Opinion of the Justices*, No. 338, 624 So.2d 107 (Ala. 1993); *ACE v. Hunt*, 1993 WL 204083 (Ala. Cir. Ct. Montgomery Cty.

claim that the remaining four courts cited by defendants feared a lack of “judicially manageable standards” and urge this Court to succumb to the same fear. *Id.*

Those four aberrations are minor and unpersuasive in light of at least 20 courts elsewhere that have adjudicated these cases, undeterred by this chimera.<sup>13</sup> The state courts have discerned and applied judicially manageable standards effectively and with aplomb.<sup>14</sup> The courts in these cases begin explicating judicially manageable standards by interpreting the Education Clause of their State’s Constitution, then, proceed by providing guidance to the remand court for its determination of whether the constitutional standard is being met.

A few examples are illustrative. When New York’s highest court reversed the granting of defendants’ motion to dismiss an education adequacy case similar to *Bonner v. Daniels*, it addressed an education clause that said, “The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated.” *CFE v. State*, 655 N.E.2d 661, 665 (N.Y. 1995). The court “examined the Education

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1993) (Appendix to *Opinion of the Justices*, No. 338, 624 So.2d at 157). Long after its appellate jurisdiction had expired, the court, *sua sponte*, reopened and then closed the case. *Ex parte James*, 836 So.2d at 877 (Johnstone, J., dissenting).

<sup>13</sup> *Columbia Falls Elem. Sch. Dist. 6 v. State*, 109 P.3d 257 (Mont. 2005); *Montoy v. State*, 102 P.3d 1160 (Kan. 2005); *Neeley v. West Orange-Cove Sch. Dist.*, 176 S.W.3d 746 (2005); *Lake View Sch. Dist. v. Huckabee*, 91 S.W.3d 472 (Ark. 2002), cert. denied, 538 U.S. 1035 (2003); *Campaign for Fiscal Equity v. State*, 801 N.E.2d 326 (N.Y. 2003); *Kasayulie v. State*, 3AN-97-3782 Civ. (Superior Court of Alaska, Sept. 1, 1999); *Abbeville Cty. Sch. Dist. v. State*, 515 S.E.2d 535 (S.C. 1999); *Zuni Sch. Dist. v. State*, District Court of McKinley County, Case No. CV-98-14-II (District Court of New Mexico 1998); *Hull v. Albrecht*, 950 P.2d 1141 (Ariz. 1997); *Claremont Sch. Dist. v. Governor*, 703 A.2d 1353 (N.H. 1997); *Leandro v. State*, 488 S.E.2d 249, 255 (1997); *DeRolph v. State*, 677 N.E.2d 733 (Ohio 1997); *Brigham v. State*, 692 A.2d 384 (Vt. 1997); *Bradford v. Maryland State Bd. of Educ.* (Cir. Ct. for Balt. City, Md. 1996); *Campbell County Sch. Dist. v. State*, 907 P.2d 1238 (Wyo. 1995); *McDuffy v. Sec’y of Educ.*, 615 N.E.2d 516 (Ma. 1993); *Committee for Educational Equality v. State*, No. CV190-1371CC (Mo. Circuit Ct. 1993); *Idaho Sch. for Equal Educ. Opportunity v. Evans*, 850 P.2d 724 (Id. 1993); *Abbott v. Burke*, 575 A.2d 359 (N.J. 1990); *Rose v. Council for Better Education*, 790 S.W.2d 186 (Ky. 1989); *McDaniel v. Thomas*, 285 S.E.2d 156 (Ga. 1981); *Seattle Sch. Dist. No. 1 v. State*, 585 P.2d 71, 92 (Wash.1978).

<sup>14</sup> *See, e.g.*, cases cited at footnote 8, above.

Article's language and history” and held that “[i]n order to satisfy the Education Article's mandate, the system in place must at least make available an ‘education’, a term we interpreted to connote ‘a sound basic education’.” *Id.* at 665. The court wrote:

Th[e Education] Article requires the State to offer all children the opportunity of a sound basic education. Such an education should consist of the basic literacy, calculating, and verbal skills necessary to enable children to eventually function productively as civic participants capable of voting and serving on a jury. If the physical facilities and pedagogical services and resources made available under the present system are adequate to provide children with the opportunity to obtain these essential skills, the State will have satisfied its constitutional obligation. (citations omitted)

*Id.* at 666. The court also expected the parties and the trial court on remand to develop a record for further consideration of the meaning of the education clause:

We do not attempt to definitively specify what the constitutional concept and mandate of a sound basic education entails. Given the procedural posture of this case, an exhaustive discussion and consideration of the meaning of a "sound basic education" is premature. Only after discovery and the development of a factual record can this issue be fully evaluated and resolved.

*Id.* at 666. Finally, the court provided guidance as to

. . . what the trier of fact must consider in determining whether defendants have met their constitutional obligation. The trial court will have to evaluate whether the children in plaintiffs' districts are in fact being provided the opportunity to acquire the . . . skills necessary to enable them to function as civic participants capable of voting and serving as jurors. A relevant issue at this point is whether plaintiffs can establish a correlation between funding and educational opportunity. In order to succeed in the specific context of this case, plaintiffs will have to establish a causal link between the present funding system and any proven failure to provide a sound basic education to New York City school children.

*Id.* at 666-67.

Following this guidance, the parties presented evidence to the trial court on: teaching quality, facilities, and other “inputs,” such as availability of textbooks and computers; student “outcomes,” such as test scores and graduation rates; the State system of education finance; and the alleged causal link. *CFE v. State*, 719 N.Y.S.2d 475 (N.Y. Sup. Ct. Jan. 10, 2001). The trial

court ruled in plaintiffs' favor, and the decision was affirmed on appeal. *CFE v. State*, 801 N.E.2d 326 (N.Y. 2003).

In *Claremont Sch. Dist. v. Governor*, 142 N.H. 462, 475-75, 703 A.2d 1353, 1359 (1997), the New Hampshire Supreme Court interpreted an education article<sup>15</sup> that is far less directive than Indiana's constitutional mandate that the State utilize all "suitable means" to provide for a "general and uniform system" of education. The Court defined a constitutionally adequate education as one that "...includes broad educational opportunities needed in today's society to prepare citizens for their role as participants and as potential competitors in today's marketplace of ideas," quoting *Claremont I*, 138 N.H. at 192, 635 A.2d at 1381. The Court stressed that a constitutionally adequate education must meet the "demands of an evolving world" and that "[a] broad exposure to the social, economic, scientific, technological, and political realities of today's society is essential for our students to compete, contribute, and flourish in the twenty-first century."

The New Hampshire high court looked to the seven criteria articulated by the Supreme Court of Kentucky in *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 212 (Ky. 1989) as establishing general, aspirational guidelines for defining educational adequacy, and determined that "[a] constitutionally adequate public education should reflect consideration of the following:

- (i) sufficient oral and written communication skills...
- (ii) sufficient knowledge of economic, social, and political systems...
- (iii) sufficient understanding of governmental processes...
- (iv) sufficient self-knowledge and knowledge of his or

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<sup>15</sup> N.H. Const. Pt. 2, Art. 83: "Knowledge and learning, generally diffused through a community, being essential to the preservation of a free government; and spreading the opportunities and advantages of education through the various parts of the country, being highly conducive to promote this end; it shall be the duty of the legislators and magistrates, in all future periods of this government, to cherish the interest of literature and the sciences, and all seminaries and public schools ..."

her mental and physical wellness; (v) sufficient grounding in the arts...(vi) sufficient training or preparation for advanced training in either academic or vocational fields...; and (vii) sufficient levels of academic or vocational skills to...compete favorably with their counterparts in surrounding states, in academics or in the job market.

The New Hampshire Supreme Court found that these guidelines comport with the “[State] Constitution’s emphasis on educating our children to become free citizens on whom the [State] may rely to meet its needs and to further its interests”” *Id.* (quoting *McDuffy*, 615 N.E.2d at 555). Significantly, the Indiana Constitution also stresses public education’s essential role in “the preservation of a free government.”

The New Hampshire Supreme Court found that the existing education finance system was incapable of supporting the standards it had articulated and thereby violated the education article in the State Constitution. The Court directed the legislature to cure the constitutional deficiency, stating: “Without intending to intrude upon prerogatives of other branches of government, see N.H. Const. pt. I, art. 37, we anticipate that they will promptly develop and adopt specific criteria implementing these guidelines and, in completing this task, will appeal to a broad constituency.”

Similarly, in *Vincent v. Voight*, 614 N.W.2d 388 (Wisc. 2000), the Wisconsin Supreme Court interpreted the constitution’s education clause, which states that:

The legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable; and such schools shall be free and without charge for tuition to all children between the ages of 4 and 20 years...

Wisc. Const. art. X, § 3. The court held this language to mean that Wisconsin students have the right to "an equal opportunity for a sound basic education [which] will equip students for their roles as citizens and enable them to succeed economically and personally" and defined that right to include

"the opportunity for students to be proficient in mathematics, science, reading and writing, geography, and history, and . . . receive instruction in the arts and music, vocational training, social sciences, health, physical education and foreign language."

*Vincent v. Voight*, 614 N.W.2d 388, 396-97 (Wisc. 2000). On this basis, the court also concluded that the plaintiffs had not presented convincing evidence that students were being denied this opportunity. *Id.* at 413.

As State education departments and legislatures have implemented academic standards and assessment systems, many courts have relied on their State's standards and equated a constitutionally sound system of education, at least in part, with a system that provides all students the opportunity to master the State's standards.<sup>16</sup> In Wyoming, for example, after a trial on the merits, the supreme court wrote approvingly of

[t]rial testimony [that] indicated aspects of a quality education will include:

Integrated, substantially uniform substantive curriculum decided by the legislature through the State Superintendent of Public Instruction and the State Board of Education with input from local school boards. ...Setting of meaningful standards for course content and knowledge attainment [and]...Timely and meaningful assessment.... (footnotes omitted).

*Campbell County Sch. Dist. v. State*, 907 P.2d 1238 (Wyo. 1995) (*Campbell I*).

In this case, the comprehensive K-12 Indiana Academic Standards, available at [www.doe.state.in.us/standards/welcome.html](http://www.doe.state.in.us/standards/welcome.html), have been developed by the State Board of

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<sup>16</sup> See, e.g., *Hull v. Albrecht (Albrecht I)*, 950 P.2d 1141, 1145 (Ariz. 1997) (“[A] constitutionally adequate system will make available to all districts financing sufficient to provide facilities and equipment necessary and appropriate to enable students to master the educational goals set by the legislature.”); *Montoy v. State (Montoy II)*, 102 P.3d 1160, 1164 (Kan. 2005) (noting that the state's school performance accreditation system, which is “based upon improvement in performance that reflects high academic standards and is measurable,” and its standards for individual and school performance levels, comprise the legislature’s determination of a constitutionally “suitable” education system) (quoting KAN. STAT. ANN. § 72-6539(a)); *Columbia Falls v. State*, 109 P.3d 257, 312 (Mont. 2005) (“Unless funding relates to needs such as academic standards . . . and performance standards, then the funding is not related to the cornerstones of a quality education.”); *Abbott v. Burke (Abbott IV)*, 693 A.2d 417, 432 (N.J. 1997) (noting that the state’s curriculum standards “embody the substantive content of a thorough and efficient education”); *Neeley v. West Orange-Cove*, 176 S.W.3d 746, 787 (Tex. 2005) (an adequate public education system is one that is “reasonably able to provide” students with a “meaningful opportunity to acquire the essential knowledge and skills reflected in . . . curriculum requirements”) (emphasis in original) (citing district court decision).

Education, and the Indiana Department of Education, on authority delegated by the General Assembly. In addition to the constitutional text and historical record, the Court can look to these standards to inform the content of a “general and uniform” system of Common Schools.<sup>17</sup> Using the standards and other sources it deems appropriate, this Court, like courts in other states, is

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<sup>17</sup> Plaintiffs Complaint cites these standards, and plaintiffs allege a violation of Indiana’s constitutionally mandated education system because they are not receiving the opportunity to master the State standards and thereby become prepared to function in society. Pls. Compl. ¶¶ 15- 26 and 58-86.

certainly capable of discerning and applying judicially manageable standards.

### CONCLUSION

For all of these reasons, *amici curiae* respectfully submit that this Court should reverse the January 2007 Order of the Superior Court and remand this case for trial.

Respectfully submitted,

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