

No. 18-1855/18-1871

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

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GARY B., *et al.*

*Plaintiffs-Appellants*

v.

RICHARD D. SNYDER, Governor, *et al.*

*Defendants-Appellees*

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On Appeal from the United States District Court  
for the Eastern District of Michigan

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**BRIEF *AMICUS CURIAE* OF  
AMERICAN FEDERATION OF TEACHERS, AFL-CIO  
IN SUPPORT OF PLAINTIFFS-APPELLANTS  
AND ARGUING FOR REVERSAL**

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## **CORPORATE DISCLOSURE STATEMENT**

*Amicus Curiae* American Federation of Teachers, AFL-CIO is an unincorporated association organized pursuant to § 501(c)(5) of the Internal Revenue Code. It is not a subsidiary or affiliate of a publicly owned corporation and it is not aware of a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome of this case.

/s/ Samuel J. Lieberman  
Attorney for *Amicus Curiae*

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Grosse Pointe Public School System, *High School Program of Studies 2018-19*, available at <https://mi01000971.schoolwires.net/Page/17376>. ....21

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## INTEREST OF *AMICUS CURIAE*<sup>1</sup>

The American Federation of Teachers, AFL-CIO (hereinafter, AFT or *Amicus*) is a national labor union representing, among others, public school educators in America. It is the national affiliate of AFT Michigan, the Detroit Federation of Teachers – Local 231, the Detroit Federation of Paraprofessionals – Local 2350, the Detroit Association of Educational Office Employees – Local 4168, and the Michigan Alliance of Charter Teachers & Staff – Local 6482. The AFT and its affiliates have an abiding commitment to ensuring that all school children in the United States are literate. As educators, we firmly believe that literacy is key to success academically and occupationally; that students must learn to read in their earliest ages, and then read to learn. Tanya S. Wright, *Reading to Learn from the Start*, AMERICAN EDUCATOR (forthcoming Winter 2018-2019)(manuscript at 4, on file with the authors).

The AFT, an affiliate of the AFL-CIO, was founded in 1916 and today represents 1.7 million members in more than 3,000 local affiliates nationwide. Five divisions within the AFT represent the broad spectrum of the AFT's membership:

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<sup>1</sup> Pursuant to Rule 29(a), counsel for *Amicus Curiae* certifies that no party or any counsel for a party in this appeal authored this brief in whole or in part or made a monetary contribution intended to fund its preparation or submission. *Amicus* further certifies that no person or entity other than *Amicus* or its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

pre-K through 12th-grade teachers; paraprofessionals and other school-related personnel; higher education faculty and professional staff; federal, state and local government employees; and nurses and other healthcare professionals. In addition, the AFT represents approximately 80,000 early childhood educators and nearly 250,000 retiree members. *Amicus* is a union of professionals that champions fairness; democracy; economic opportunity; and high-quality public education, healthcare and public services for students, their families and communities. The AFT is committed to advancing these principles through community engagement, organizing, collective bargaining and political activism, and especially through the work AFT members do every day.

This appeal presents the question of whether all children, no matter who they are or where they live, must have the opportunity to attain literacy while attending school. AFT is in the unique position of being able to offer the Court the perspective of its 1.7 million members, the majority of whom are charged with the professional responsibility of providing instruction in literacy to school children across Michigan and the United States every day.

## INTRODUCTION

Every school day in Michigan and across the United States, America's educators stand before students in classrooms attempting to provide them the opportunity to attain literacy that this lawsuit demands. All too often, children in the Detroit schools fail to become literate, not because of a lack of effort, persistence, or devotion by educators, but due to the willful disregard of the State of Michigan. This brief will illustrate the ways in which the State of Michigan has failed to provide educators in Detroit with the resources and tools necessary to ensure that students receive evidence-based literacy instruction at the elementary and secondary levels. Furthermore, this brief will argue for the provision of safe school conditions in the Detroit schools that are essential to literacy instruction.

This brief proceeds from the fundamental premise that educators need the “tools, time, and trust” to do their jobs effectively. Randi Weingarten, *A New Path Forward: Four Approaches to Quality Teaching and Better Schools*, AMERICAN EDUCATOR, Spring 2010, at 38; *See also* International Literacy Association, *What Effective Pre-K Literacy Instruction Looks Like*, 2018 at 6-7, available at <https://literacyworldwide.org/docs/default-source/where-we-stand/ila-what-effective-pre-k-literacy-instruction-looks-like.pdf>; Susan B. Neuman, *First Steps Toward Literacy: What Effective Pre-K Instruction Looks Like*, AMERICAN EDUCATOR (forthcoming Winter 2018-2019)(manuscript at 11, on file with the

authors). This core objective can be achieved by placing educators in the position to be successful by allowing them to teach their lessons in safe schools, with a solid curriculum that includes high quality reading instruction and healthy and adequate facilities. *Id.* As will be shown, these have not been the characteristics of the Detroit schools while under the control of the State of Michigan.

Not only have conditions in Detroit classrooms been inadequate to foster literacy instruction, they have, in the words of the court below, been “deplorable.” *Gary B. v. Snyder*, No. 2:16-CV-13292, 2018 WL 3609491, at \*6 (E.D. Mich. July 27, 2018). As the court notes, plaintiffs have pled certain concrete, particular, actual injuries arising out of conditions in the school buildings “that make learning nearly impossible” as well as a lack of teachers and books. *Id at 11*. These are conditions that must be corrected in order for students in Detroit to learn.

Respectfully, the members of the AFT submit this brief to the Court in their capacity as educators. We submit that the question before this Court is a vital and important matter of Constitutional interpretation. The Court’s decision on the issue presented will determine whether children in Detroit and throughout the State of Michigan are provided with the opportunity to become literate citizens. America’s educators are proud to stand in support of that opportunity, as they do every single day.

## ARGUMENT

### I. Educators in the Detroit Schools Must Have the Resources Necessary to Ensure that Students Receive Essential and Effective Literacy Instruction at the Elementary and Secondary Levels

Thirty-six years ago, the Supreme Court of the United States recognized that, “Illiteracy is an enduring disability. The inability to read and write will handicap the individual deprived of a basic education each and every day of his life.” *Plyler v. Doe*, 457 U.S. 202, 222 (1982). In making this statement, the Court paid heed to the profound injustice of lifelong illiteracy. To prevent this injustice and ensure that it does not continue in future generations, it is now time to recognize that the Constitution requires our public schools to provide access to literacy. The Detroit schools have had so many challenges confront them that, due to a lack of support from the State of Michigan, they have been unable to equip each and every one of the students they serve with the opportunity to be literate. The court below erred in failing to sufficiently recognize the magnitude and implications of the literacy issue in the Detroit schools.

#### A. Elementary students in Detroit do not have literacy skills on par with those in the rest of Michigan or peer cities in the United States.

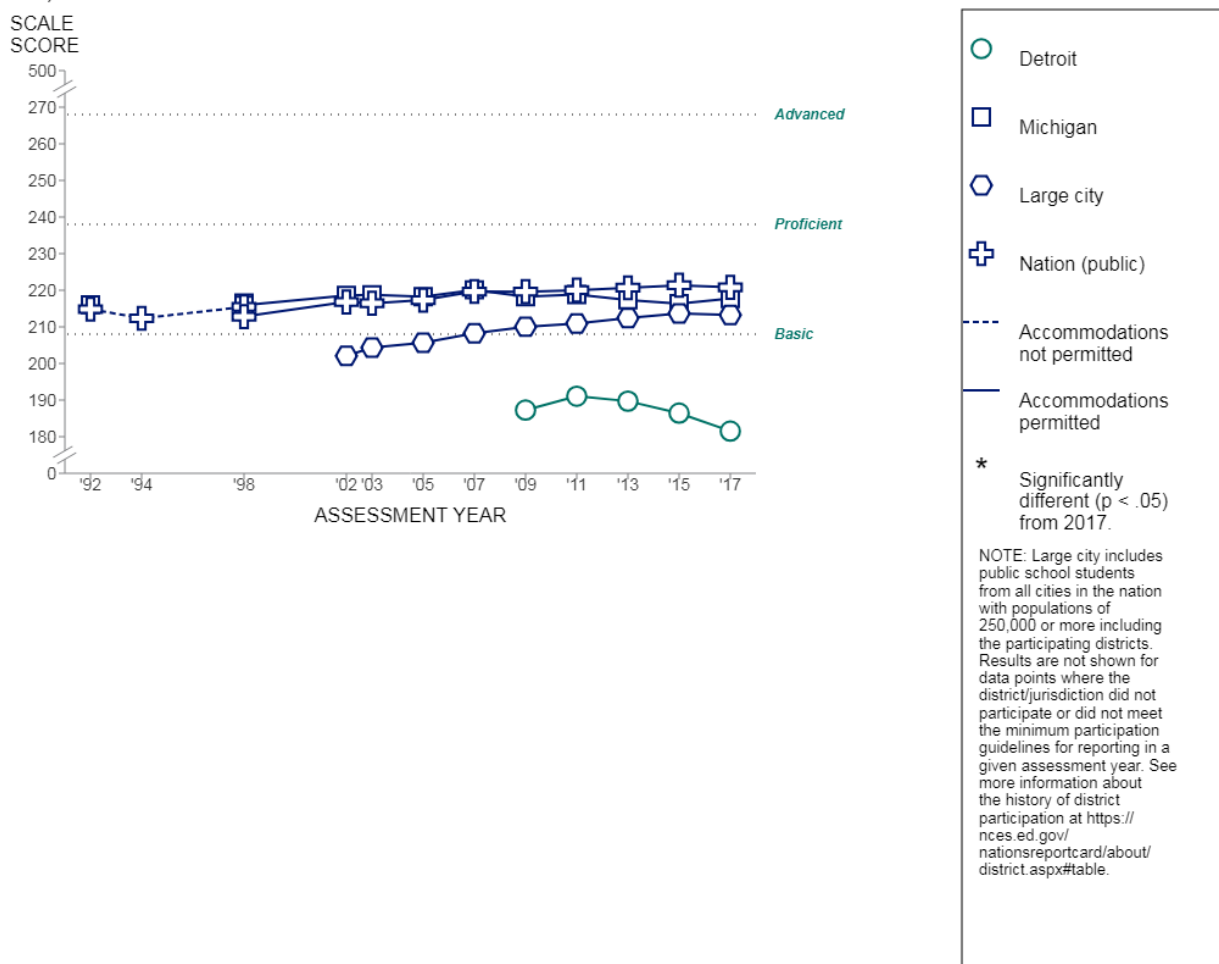
It is a matter of measurable, demonstrable fact that the opportunity to attain literacy is lacking in the Detroit schools. The National Assessment of Educational Progress (NAEP) is the only assessment that comprehensively measures what American students know and can do in various subjects across the nation, states,

and in some urban districts, one of which is Detroit.<sup>2</sup> U.S. Dept. of Ed., Inst. for Ed. Sciences, Nat'l. Ctr. for Ed. Statistics, *About NAEP* (October 31, 2018), available at <https://nces.ed.gov/nationsreportcard/about/>. The chart below is generated by the NAEP website from current NAEP data and it demonstrates that average reading scores for fourth grade students in the Detroit schools fall far below those in the rest of the State of Michigan and the entire United states, *and are trending downward*. U.S. Dept. of Ed., Inst. for Ed. Sciences, Nat'l. Ctr. for Ed. Statistics, *NAEP Data Explorer* (October 31, 2018), available at <https://www.nationsreportcard.gov/ndecore/xplore/NDE>.

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<sup>2</sup>Per the NAEP website, “NAEP is given to a representative sample of students across the country. Results are reported for groups of students with similar characteristics (e.g., gender, race and ethnicity, school location), not individual students. National results are available for all subjects assessed by NAEP. State and selected urban district results are available for mathematics, reading, and (in some assessment years) science and writing.”

Trend in NAEP reading average scores for fourth-grade public school students in Detroit, Michigan, large city, and nation (public)



The chart above shows that NAEP reading average scores for fourth-grade public school students across the nation have remained relatively stable, trending slightly upward from approximately 215 in 1992 to 220 in 2017. These same scores for students in Michigan have been nearly on par with the national scores. The trend among students across all the large cities tracked by NAEP has gone up from approximately 200 in 2002 to approximately 210 in 2017. Disturbingly, the trend in the Detroit schools is going down, having begun at approximately 185 in 2009 and ending up at or below 180 in 2017.

NAEP assesses student performance in reading at grades 4, 8, and 12 in both public and private schools across the nation. J. McFarland, *et al. The Condition of Education 2018* (NCES 2018-144). U.S. Department of Education. Washington, DC: National Center for Education Statistics, *available at* <https://nces.ed.gov/pubs2018/2018144.pdf>. Research shows, however, that fourth grade is already too late for many students. It is a well-known maxim that “In kindergarten through third grade, kids learn to read, and then in fourth grade and beyond, kids read to learn.” See Wright, *Reading to Learn from the Start* at 4. Educators know that students who have failed to master reading by the end of third grade often have significant difficulty in later grades and drop out before earning a high school diploma. Donald J. Hernandez, *Double Jeopardy: How Third-Grade Reading Skills and Poverty Influence High School Graduation*, The Annie E. Casey Foundation, 2012, at 4. In a recent longitudinal study of nearly 4,000 students, researchers for the first time calculated high school graduation rates for children at different reading skill levels and with different poverty rates. *Id.* The results of this study show that, “those [students] who do not read proficiently by third grade are four times more likely to leave school without a diploma than proficient readers.” *Id.* Additionally, the study found that, “[f]or the worst readers, those who could not master even the basic skills by third grade, the rate is nearly six times greater. While these struggling readers account for about a third of the



students, they represent more than three-fifths of those who eventually drop out or fail to graduate on time.” *Id.* This study presents compelling proof that a failure to foster access to literacy in early grades leads to lifelong dire consequences for students and our society.

B. Educators must be equipped with the tools to deliver evidence-based literacy instruction.

Common sense dictates that teachers’ working conditions are also students’ learning conditions and conditions in the Detroit schools while under the control of the State of Michigan are unacceptable for all concerned. We have written about the “tools, time, and trust” educators need to be able to foster access to literacy. *See Weingarten, A New Path Forward*, at 38. The first of these three factors is “tools” – this refers to the means, resources, and competency to get the job done. *See id.* Ultimately, what students need in Detroit in order to attain literacy are the same things that all students need and that are plentiful in suburban schools, such as: proper professional development for educators, reasonable class sizes, appropriate diagnostic assessments that enhance learning opportunities, and evidence-based tools for literacy instruction. All of this comes at a price, but the investment in students “can profoundly shape the life outcomes of economically disadvantaged children.” C. Kirabo Jackson, Rucker C. Johnson and Claudia Persico, *Boosting Educational Attainment and Adult Earnings: Does school*

*spending matter after all?*, EducationNext, Spring 2015, available at <https://www.educationnext.org/boosting-education-attainment-adult-earnings-school-spending/>. Such an investment “coupled with systems that help ensure spending is allocated toward the most productive uses,” which we discuss below, provide the difference between schools that do not serve students and the community versus schools in which the attainment of literacy is an everyday occurrence. *See id.*

There are certain evidence-based practices that researchers know to be effective in terms of fostering access to literacy for students. These practices have been proven to lead to better outcomes and improve access to literacy and achievement of literacy, as well. For the sake of organization, we separate these practices into those that are foundational, specific, and equity-focused.

Schools that demonstrate effectiveness in providing access to literacy by closing the achievement gap between white and minority students implement certain foundational practices. First, schools should share with stakeholders, such as educators and parents, data that demonstrates the gap between where students are in terms of literacy and where they need to be. Willard R. Daggett, *Achieving Reading Proficiency for All*, International Center for Leadership in Education, 2003 at 4-5. A literacy plan should be initiated for each student at the prek-12 level that emphasizes content area reading in higher grades. *Id.* Students should be

matched to instructional materials at appropriate reading levels. *Id.* Schools should provide “comprehensive, well-focused, and sustained staff development on the need for reading instruction” that involves all teachers. *Id.* And, among other assessments, schools should have, “a way to compare where students are in reading and where they need to be to fulfill their educational and real-world goals and obligations.” *Id.*

Recognizing that the above goals are accepted as the foundation for providing access to literacy, there are also specific practices that can be implemented in schools to make literacy access achievable. There are any number of effective intervention programs specifically targeted toward literacy that we would point to as being useful in the Detroit schools. One example is Reading Recovery, which is a “short-term intervention of one-to-one tutoring for low-achieving first graders” that is used as a supplement to classroom teaching.

Reading Recovery Council of North America, *Basic Facts*, available at <https://readingrecovery.org/reading-recovery/teaching-children/basic-facts/>.

Students in this program “receive a half-hour lesson each school day for 12 to 20 weeks with a specially trained Reading Recovery teacher.” Another example is Success for All, which provides both schoolwide and targeted research-based intervention programs that involve cooperative learning, effective and engaging curriculum and instruction, as well as professional development that is geared

toward increasing student achievement. Success for All Foundation, *Our Approach*, available at <http://www.successforall.org/our-approach/>. Both of these programs are evidence-based and research-based and have a track record of success.

The types of specific programs highlighted above are important because they bring together the types of specific tools and interventions that have been shown to increase student achievement. The National Council for Literacy Education conducted a national survey that resulted in more than 2,400 responses centered on the research question: “How can we create and sustain the conditions for the kind of professional learning that research tells us has an impact on student achievement?” National Center for Literacy Education, *Remodeling Literacy Learning: Making Room for What Works*, National Council of Teachers of English 2013, at 4. This National Survey of Collaborative Professional Learning Opportunities had the goal of establishing “a national baseline for the use of effective professional collaboration around literacy learning and to document the most critical needs.” *Id.* There were five “key findings” from the survey, which led to conclusions about how educators should properly be supported “to meet rising literacy expectations” in the United States. *Id.*

First, the report found that “literacy is not just the English teacher’s job anymore.” *Id.* at 5-6. Successful schools were found to be investing in “teacher

capacity to develop student literacy” and that this is being done “not just with their elementary and English teachers.” *Id.* Second, the report found that “working together is working smarter.” *Id.* Surveyed educators indicated that the most powerful professional learning experiences were achieved through opportunities to collaborate with colleagues. *Id.* Third, the report found that schools don’t tend to be structured to facilitate collaboration and that the time allotted to collaboration is shrinking. *Id.* Fourth, the report found that in many, but certainly not all, schools around the country “building blocks” are in place that will allow for effective literacy instruction. *Id.* The implication of this research is that so-called “building blocks” such as, time and structural opportunities for collaboration, appropriate digital tools, sufficient student data, and access to literacy coaches and librarians are necessary to effective literacy instruction. *See id at 6.* Finally, and perhaps most importantly, the report found that “effective collaboration needs systemic support.” *See id.* The report states, “Our data also highlight the crucial role that principals and other school leaders play in facilitating effective staff collaboration by modeling and providing tools, training, and time to support it.” *Id.* Simply put, all of the supports and interventions that are discussed in this brief highlight collaboration as an essential component of any education program because it has been proven to result in increases to student achievement. The State of Michigan has failed to ensure that the opportunities and resources necessary for collaboration

are available in the schools. But, as the studies discussed in this brief demonstrate, “The quality of formal partnerships between teachers unions, administrators, and teachers at the school level is a significant predictor of student performance, as well as performance improvement, after poverty and school type are taken into account.” Saul A. Rubinstein and John E. McCarthy, *Teachers Unions and Management Partnerships: How Working Together Improves Student Achievement*, Center for American Progress, March 2014 at 2.

Along with the foundational and specific practices outlined above, it is important to consider that literacy instruction should be context-specific to the life experience of students, so that the instruction will be relevant and engaging to them. Research indicates that individual student characteristics, sociocultural factors, language issues, and instructional issues must be taken into account when attempting to foster literacy instruction. See Tamara Lucas & Sandra R. Schecter, *Literacy Education and Diversity: Toward Equity in the Teaching of Reading and Writing*, 24 URBAN REV. No. 2, at 86 (1992). Taking these issues into account when engaging in literacy education requires asking whether individual student characteristics have been considered and requires educators to know about the cultural backgrounds and contexts of their students. *Id.* at 100-01. Decisions about curriculum and instructional strategies should “reflect the needs of our students.” *Id.* In order to accomplish this goal, several recommendations have been made by

researchers. Among them are, assuming from the outset that all students are able to achieve and “Incorporat[ing] content from and about diverse groups across the curriculum... includ[ing] non-European literature, history, art, and the contributions of non-Europeans to science and mathematics.” *Id at 101*.

Simply put, the evidence-based tools for literacy instruction described above are the exception not the rule in the Detroit schools. While under the control of the State of Michigan, the tools and supports necessary for student learning have been entirely lacking in the Detroit schools. The lack of resources has been egregious and the victims of the State’s negligence are the children and their parents who look to the Detroit schools to provide a solid educational foundation for their lives.

During the State’s management of the school system, staffing issues were a key concern and they continue to be a concern today. It is not uncommon for substitute teachers to be assigned to classrooms for long periods of time. *See Telephone Interview with Leslee Przygodski, Teacher, Detroit Public Schools (November 6, 2018)*. One teacher in a Detroit middle school reported that her typical class size two years ago was 43 students. *Id*. That number is down to a more manageable 30 now, but it is still a large number of students, which makes it difficult for teachers to offer individualized instruction. *Id*. There is certainly not time, when a middle-school teacher is charged with 43 students, as she was when the State controlled the Detroit schools, to put together a literacy plan that

emphasizes content area reading in higher grades. *See* Daggett, *Achieving Reading Proficiency for All*, at 4-5

Educators in Detroit serve a student population that is in desperate need of reading interventions and staff support, such as access to literacy coaches and librarians. National Center for Literacy Education, *Remodeling Literacy Learning: Making Room for What Works*, at 6. Yet, there are not enough books or libraries in the Detroit schools, let alone librarians. *See* Telephone Interview with Lakia Wilson, School Counselor, Detroit Public Schools (November 6, 2018). They need lower class sizes, small group instruction, and structural supports for students who need additional help. One educator told of a student who entered her elementary-middle school as a third grader who could not read. *Id.* He was able to get time and resources to be able to learn basic reading skills by the end of the school year due to a resource room teacher who devoted extra attention to him. *Id.* That a teacher was willing to devote her personal time to getting a struggling student up to speed is commendable but it is not a scalable solution to the massive system-wide literacy deficit in the Detroit schools. As the noted education professor and researcher E.D. Hirsch Jr. has stated, “Good teaching can often depend more reliably on the coherence of the wider system, and the cooperation it brings, than on virtuoso performances.” E.D. Hirsch Jr., In Defense of Educators: *The Problem of Idea Quality, Not "Teacher Quality"*, AMERICAN EDUCATOR, Winter 2016-2017.



Resource room teachers are in short supply in Detroit and educators need the evidence-based tools described above in order to be able to work with all of the struggling students who need their help.

In sum, based on the research and recommendations above, as well as those presented by other *amici* whose professional experience and advocacy are focused on the area of literacy instruction, there are a significant number of pedagogical and resource deficits that need to be addressed to ensure that students in the Detroit schools and across Michigan have access to literacy at school every day.<sup>3</sup>

II. The State of Michigan has Failed to Provide Safe School Conditions in the Detroit Schools that Would be Conducive to Literacy Instruction.

A. Conditions in the Detroit schools are deplorable.

The physical conditions of the schools in Detroit shock the conscience. Three-inch long cockroaches must be squashed by children, who volunteer for the task. Julie Bosman, *Dire Conditions in Public Schools Threaten Detroit's Recovery*, N.Y. TIMES, Jan. 21, 2016, at A1. A moldy, rancid odor is present in the air. *Id.* Rodents are out in school buildings in the middle of the day. *Id.* “Like they’re coming to class,” said one teacher. *Id.* Indeed, not only are these the conditions the children of Detroit are expected to endure while undertaking their

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<sup>3</sup>The AFT acknowledges and commends the work done by Kappa Delta Pi, the International Literary Association, and the National Association for Multicultural Educators on this subject and is generally in agreement with and support of the arguments in their *amicus* brief in the court below.

studies, they are also the working conditions that educators must endure while delivering instruction. Detroit's educators respectfully request that this Court not look away from these stomach-turning images, but rather carefully consider whether systemic access to literacy could ever take place under such conditions.

Plaintiffs-Appellants have carefully detailed the Detroit schools' appalling physical conditions in their complaint in the court below. Complaint, RE 1, Page ID # 87-98. These conditions include: vermin, extreme temperatures, insufficient or inappropriate facilities, and extreme overcrowding. *Id.* These conditions, and others, led the AFT to file a civil action in the United States District Court for the Eastern District of Michigan. *See American Federation of Teachers v. Detroit Public Schools*, Case. No. 2:16-cv-10400-DML-RSW (E.D. Mich. filed Feb. 4, 2016). The fact of the matter is that, to classroom teachers the connection between student learning and safe physical conditions in the schools is fundamental. No student should be expected to attend a public school that is unsafe or where the building conditions are so dilapidated and neglected that effective learning cannot take place. While the AFT's case resulted in a settlement and a Consent Judgment issued by the court below, that settlement only established a remediation process and did not include any substantive agreement with the State (or the district) that would meet even the basic requirements for teaching and

learning. The necessary learning conditions for literacy instruction to succeed are still not present.

The most recent development concerning the intolerable learning conditions in the Detroit schools arose at the beginning of the current school year, 2018-19. This development involves the issue of the safety of drinking water in the Detroit school buildings. Jacey Fortin, *Detroit Schools Turn Off Drinking Fountains*, N.Y. TIMES, Aug. 30, 2018, at A12. Due to elevated levels of lead and copper in drinking water, which testing indicates has been present since 2016 while the State was in control of the schools, the 2018-19 school year in Detroit began with all the drinking fountains in schools turned off. *Id.* At least 34 schools had copper and/or lead levels that are unacceptable. *Id.* While the state no longer controls the Detroit schools, this is a problem that testing indicates was present in 2016, while the schools were under the state's control. *See id.*

- B. The deplorable conditions in the Detroit schools are in stark contrast to the conditions in surrounding school districts.

While we are aware of no comprehensive study detailing the difference in physical plant conditions between the Detroit schools and surrounding school districts, it is possible to compare demographic data and course offerings. For the sake of simplicity, and in order to offer an apples-to-apples comparison, we can get a clear picture of the demographic differences and disparities in course offerings by looking at two high schools in the Detroit area. Osborn is an inner-city high

school located on Seven Mile Road in Detroit. Serious deficiencies in the physical plant of this school are pled in Plaintiffs-Appellants complaint in the court below. Complaint, RE 1, Page ID # 5, 9, 12-14, 37, 57, 63, 68-105, 122-125. Osborn is located less than eight miles away from Grosse Pointe South High School, in the Detroit suburb of Grosse Pointe. Though close in proximity, the two schools could not be more different in terms of demographics or course offerings.

Approximately 83% of students at Osborn are eligible for free or reduced-price lunch. Journey for Justice Alliance, *Failing Brown v. Board: A Continuous Struggle Against Inequity in Public Education*, 2018 at 59. At Grosse Pointe South High School, that number is 7%. *Id.* Approximately 98% of the students are African-American at Osborn, 1% are Asian, 1% are “other,” and 0% are white. *Id.* The racial demographics are nearly the opposite at Grosse Pointe South, where 83% of students are white, 11% are African-American, 2% are Latino, 1% are Asian, and 3% are “other.” *Id.*

Along with the demographic differences, come significant differences in course offerings. Osborn offers zero advanced placement classes; Grosse Pointe South has 24. *Id.* There are eight English course offerings at Osborn; Grosse Pointe South has 28. *Id.* Beyond these numbers, the availability of the program of studies for online public examination, or the lack thereof, speaks volumes. We are unable to find a list of course offerings for Osborn online. Grosse Pointe South High

School's Program of Studies for the 2018-19 is not only proudly available online, it reads like a course catalog for a small college. *See* Grosse Pointe Public School System, *High School Program of Studies 2018-19*, available at <https://mi01000971.schoolwires.net/Page/17376>. It is quite probable that there are small colleges that do not offer Film Literature, Honors Journalism, and "Reading & Writing Through Athletics," but students at Grosse Pointe South have such courses readily available to them. *See id.*

There is a world of difference in the less than eight miles that separate Osborn from Grosse Pointe South. No one is arguing that students at Osborn have a Constitutional right to take "Reading & Writing Through Athletics" but no reasonable person would argue that the students at Osborn are less deserving of access to literacy education than those at Grosse Pointe South. The question is why there are such disparate resources available at these two schools and the answer is that the State of Michigan has chosen to forsake the 98% African American student body at Osborn. This must not be permitted to continue any longer.

- C. Members of the Detroit Federation of Teachers know that the State of Michigan has failed to provide the conditions and resources necessary for schools to be successful.

The members of the Detroit Federation of Teachers, AFT Local 231 are the front line educators in the Detroit schools. They are the professionals charged with the responsibility to provide literacy instruction to Detroit's children, and they are

proud to discharge this responsibility on a daily basis. One school counselor, assigned to an inner-city elementary-middle school, said “I love teaching in the Detroit schools. I love the community, the people, the stakeholders, the children. They’re all authentic. There’s no pretense in Detroit. Everyone is real.” Telephone Interview with Lakia Wilson, School Counselor, Detroit Public Schools (November 6, 2018). Another, when asked whether she enjoyed teaching in the Detroit schools, simply said, “Yes. Where else would you want to teach I guess? I enjoy the students, I enjoy the community. I like teaching in Detroit.” Telephone Interview with Leslee Przygodski, Teacher, Detroit Public Schools (November 6, 2018). For her, the best part of teaching in Detroit is “the students and their families.” *Id.* “They are like family to me,” she said. *Id.* Despite their love for the job, and due to their concern for the children, educators in Detroit are all too aware of the challenges facing the district. Educators were first-hand witnesses to the State of Michigan’s overwhelming lack of support and investment in the Detroit Public Schools. During the years when the State of Michigan ran the school district, physical conditions in the schools were at their worst. When repairs were needed during those years, they simply were not made or were done with shoddy workmanship. Wilson Interview. The deplorable conditions discussed above, such as: vermin, unsafe temperatures, crumbling classrooms, and overcrowded schools are both their working conditions and students’ learning conditions. One educator

personally witnessed, on multiple occasions, two cockroaches of 4-5 inches in length, and mice running through classrooms. *Id.* A middle-school teacher related that she was showing a video on a chalkboard one time when a mouse ran straight across the chalk railing. Przygodski Interview. The same teacher spoke of finding cockroaches had infested the Keurig coffee machine that she kept in her classroom. *Id.* No one knows better than teachers in Detroit that the state has failed to provide the conditions and resources needed for schools to be successful and the state continues to evade responsibility.

The impact of poor physical conditions and lack of resources on the daily lives of educators and their students cannot be overstated. One educator told of a preschool classroom ceiling in Spain Elementary-Middle School, an inner-city school with a 99% African American population where 82% of students are on free or reduced-price lunch, which leaked “like a sieve.” Detroit Public Schools, *School Profile Report: Spain Elementary-Middle School*, available at <https://dpscd.detroitk12.org/schools/reports/profiles/215.pdf>; Wilson Interview.

The preschoolers needed to be moved to a different classroom during the middle of the year, which was unsettling for all concerned. *Id.* It is simply unfair and unreasonable that many pre-school and school-age children in Detroit are not able to look at the schools in their community as well-constructed, well-functioning

places of learning; rather, they see them as a reflection of the poverty present in their lives every day.

Another teacher spoke about the difficult conditions at Clippert Academy, a middle school where the student population is 94% Latino and approximately 92 of students are on free and reduced-price lunch that was built circa 1905. Detroit Public Schools, *School Profile Report: Clippert Academy*, available at <https://dpscd.detroitk12.org/schools/reports/profiles/065.pdf>. Though the building has some pleasant architectural features, classrooms are too small because the school was designed to be an elementary school. Przygodski Int.. Lights flicker frequently and outlets in the classroom do not work. *Id.* The flickering lights have triggered an epileptic seizure in a student on at least one occasion. *Id.* It is very hot in the summer due to a lack of air conditioning, and up until the boiler was recently replaced, it was constantly cold; children were often wore their coats in class. *Id.* The same building has terrible black dust that often comes through the vents. *Id.* Multiple teachers in the recent past have been diagnosed with cancer, including breast, lung, and thyroid cancers. *Id.*

Lack of resources is a constant concern for educators in Detroit. So-called “smart boards” are commonplace in American classrooms today, but in one Detroit elementary-middle school, approximately 20% of the classrooms do not have one at all. Wilson Interview. Books are lacking in classrooms, on both the elementary



and middle school levels. *Id.*; Przygodski Interview. Teachers are not even asked what they need; they are given what the school system decides to provide based on old demographic information. Wilson Interview. Photocopiers, or the lack thereof, are a constant concern for Detroit educators. In one school, the teachers and other educators purchase toner cartridges on a regular basis, at approximately \$150 per cartridge from their personal funds. *Id.* At another school, teachers have been told that photocopies will no longer be available once the current supply of ink is used up. Przygodski Interview. A school counselor explained that when she needs to send a note home to the entire school, which has approximately 400 students, she puts two notes on one piece of 8.5” x 11” paper so she will have enough to go around and she must run them 25 at a time through the small copier/printer that is available to her because the school has no full-size photocopier. Wilson Interview. “A high volume copier is a luxury item,” she said. *Id.*

Educators in Detroit are forced to be resourceful, in innumerable ways, just to provide for their kids. Apart from spending their personal money on supplies, which has sadly become an unremarkable fact of life for many inner-city educators in this country, they find other ways to make due. Teachers use “Donors Choose,” a website that allows people of means to donate to public schools and public school teachers. Przygodski Interview. A small handful of teachers have connections to wealthy benefactors and are able to obtain supplies for their

classrooms but these individuals are the exception to the rule. *Id.* Due to the fact that there is no library or librarian at one elementary-middle school, the school counselor takes kids on field trips to Wayne State University, community colleges, or the local public library because that way “they get a real library with librarian.” Wilson Interview. There is also a bookmobile that the Detroit Public Library sends to schools once or twice a month. *Id.* Clearly, these efforts by the teachers to compensate for the lack of instructional resources, while heroic, are not sufficient to make up for the State’s willful disregard for the needs of their students.

Detroit Federation of Teachers members are offended by the statement made in the State of Michigan’s Motion to Dismiss in the court below, in which the state argued that Detroit students face “other socioeconomic, intellectual, and personal factors affecting literacy.” Motion to Dismiss, RE 60, Page ID # 514. Teachers work every day to educate the students in Detroit and they know that Detroit children have just as much intellectual capacity to learn as the students of any other school district in Michigan. According to one educator, the children in Detroit are, “beautiful, funny, happy, sad, creative, and resilient. They’re tough.” Wilson Int. It is unjust, she says, “that we have to go to court to beg for literacy to be a right.” *Id.* Another educator wanted this Court to know that her “poor black and brown children are just as intelligent, just as deserving as all other children” who have access to means and resources. Przygodski Interview. She relayed a story about a

time when she took a group of students to a suburban school, which elicited wide-eyed stares and expressions of disbelief. *Id.* “How do you tell them they are not worthy,” she asked. *Id.* “They do not have the same access, and it is wrong.” *Id.* Another educator summed up her feelings by saying, “Kids should have the right to quality schools in an environment that is as nice and up to speed as any neighborhood.” *Id.* Evidently, the State of Michigan does not agree. Instead of providing the appropriate resources and supports to help students learn, the State continues to attack their intellectual capabilities. *See* Motion to Dismiss at 514.

The teachers in the Detroit schools seek only the “tools, time, and trust” to be able to practice their profession in schools with conditions that foster access to literacy. *See* Weingarten, *A New Path Forward*, at 38. They respectfully request that this Court stand with them and their students in support of access to literacy in the Detroit schools.

## CONCLUSION

For the foregoing reasons, *Amicus Curiae* respectfully requests that the ruling of the United States District Court for the Eastern District of Michigan be reversed.

Respectfully submitted,

DATED: November 26, 2018

/s/ David J. Strom

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DATED: November 26, 2018

/s/ Samuel J. Lieberman  
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**CERTIFICATE OF SERVICE**

I hereby certify that on November 26, 2018, I electronically filed the foregoing document through the court's Electronic Case Filing (ECF) system, which will send notifications to counsel of record for all parties.

DATED: November 26, 2018

/s/ Samuel J. Lieberman  
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