No. 18-1855, 18-1871

United States Court of Appeals for the Sixth Circuit

GARY B.; JESSIE K., A MINOR, BY YVETTE K., GUARDIAN AD LITEM; CRISTOPHER R., A MINOR, BY ESCARLE R., GUARDIAN AD LITEM; ISAIAS R., A MINOR, BY ESCARLE R., GUARDIAN AD LITEM; ESMERALDA V., A MINOR, BY LAURA V., GUARDIAN AD LITEM; PAUL M.; JAIME R., A MINOR, BY KAREN R., GUARDIAN AD LITEM,

Plaintiffs- Appellants,

v.

RICHARD D. SNYDER, GOVERNOR; JOHN C. AUSTIN, MEMBER OF MI BD OF EDUCATION; MICHELLE FECTEAU, MEMBER OF THE MI BD OF EDUCATION; LUPE RAMOS-MONTIGNY, MEMBER OF THE MI BD OF EDUCATION; PAMELA PUGH, MEMBER OF THE MI BD OF EDUCATION; KATHLEEN N. STRAUS, MEMBER OF THE MI BD OF EDUCATION; CASANDRA E. ULBRICH, MEMBER OF THE MI BD OF EDUCATION; EILEEN WEISER, MEMBER OF THE MI BD OF EDUCATION; RICHARD ZEILE, MEMBER OF THE MI BD OF EDUCATION; BRIAN J. WHISTON, SUPERINTENDENT OF PUBLIC INSTRUCTION FOR THE STATE OF MI; DAVID B. BEHEN, DIRECTOR OF THE MI DEPT OF TECHNOLOGY; NATASHA BAKER, STATE SCHOOL REFORM/REDESIGN OFFICER, IN THEIR OFFICIAL CAPACITIES,

Defendants- Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN,

THE HONORABLE STEVEN J. MURPHY III, PRESIDING

CASE NO. 2:16-CV-13292

AMICUS CURIAE BRIEF OF SCHOLARS, ENTITIES AND UNIVERSITY ADMINISTRATORS IN SUPPORT OF PLAINTIFF-APPELLANT AND SUPPORTING REVERSAL

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STATEMENT OF INTEREST[1]

Amici are a group of 68 leading scholars, entities, and university administrators that focus on teacher education, educational policy, assessment and literacy throughout the United States. *Amici* submit this brief in support of Plaintiffs' appeal in this action. Brief biographies of each of the *Amici* are attached hereto as Appendix A.

The principal author of the brief is Elizabeth Birr Moje, the Dean of the University of Michigan School of Education and the George Herbert Mead Collegiate Professor of Education and Arthur F. Thurnau Professor. Dean Moje has spent over 20 years studying literacy teaching and learning in a range of Detroit schools and has conducted long-term systematic observations in both traditional and charter public schools, as well as in independent schools. As a result, she brings substantial longitudinal evidence to bear on the conditions of schooling in Detroit.

Each of the *Amici* who has joined in this brief shares a deep professional interest in Plaintiffs' efforts to attain for themselves access to meaningful literacy instruction. *Amici* are united in their conviction that without such instruction,

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[1] Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), *Amici* certify that no person or entity, other than *Amici*, their members, or their counsel, made a monetary contribution to the preparation or submission of this brief or authored this brief in whole or in part. This brief is filed pursuant to Federal Rule of Appellate Procedure Rule 29(a)(2) with the consent of all parties.

children in the Detroit public schools will not develop the basic literacy skills they will need to be active participants in our democracy. Without basic literacy skills, these children will also be unable to complete the complex literacy tasks necessary to provide for themselves and their families and will instead be consigned to low future earnings and a lack of voice in our society. *Amici* believe that access to meaningful literacy instruction is necessary not only for active citizenship and future work, but also to model for Detroit's youth the core democratic values of our society-- their right to liberty and a commitment to the common good of all of society's members.

Amici seek to provide this Court with additional context necessary to fully understand the current state of education for the children and youth in the city of Detroit and the critical importance of literacy to their futures. This brief therefor draws upon academic research, the expertise of *Amici* in teacher education, educational policy, assessment and literacy, and, as noted, the direct experience of Dean Moje from her twenty years in the classrooms, schools, and communities across the City of Detroit.

INTRODUCTION

We talk, in the United States, about core democratic values of life, liberty, and the pursuit of happiness. We talk about the common good. We talk about respecting religious and political liberties of all members of society. We talk about rights guaranteed to all citizens under the Constitution of the United States.

What we talk about less is how we, as a society, develop and maintain those basic democratic values in our community members. How do our nation's children and youth develop a commitment to the values that are the bedrock of our democracy? How do they come to understand and preserve these values to the extent that some are willing to give great service, and even at times, their lives, to uphold these values? How do we ensure that these values will be protected into the future?

In the past, these values were developed and preserved in two ways. One was education. The second was by providing models of these values lived out in action. Unfortunately, for certain of our nation's youth, these means of learning and preserving core democratic values are not available.

Specifically, children and youth in the city of Detroit are experiencing substandard opportunities to learn every day and every year in school, while their suburban and/or well-resourced neighbors are offered high-quality opportunities to learn. Although new leadership in the city's schools is working to redress these

inequalities, they are hobbled by years of miseducation in Detroit schools, crumbling school structures that are difficult to maintain, toxic water systems, and by the lack of support from the State. This unequal access to education not only prevents Detroit children from developing the basic literacy skills they need to engage in and fight for the most basic rights, but also consigns them to a future of low economic earnings and a lack of voice in society. How can one preserve and defend the Constitution if one cannot read it? How can people provide for themselves and their families if they cannot complete the complex literacy tasks required in an increasingly complex economy? How can Detroiters defend their liberties and serve the common good, if they cannot make sense of laws on which they are expected to vote? How can Detroiters contribute to a literate society if they are not literate? Detroit children and youth who are denied equal access to education are hardly being enabled to pursue life, liberty, and happiness or to serve the common good when they are denied the opportunity to develop basic literacy skills necessary for active citizenship or future work.

This unequal education also fails to model for Detroit's children those core democratic values. In particular, children who are compelled to attend poorly equipped schools at risk of being declared truant are not being afforded the liberty ensured under the Constitution of the United States of America. Imagine waking every morning to head off to buildings infested with rats and other vermin, piped

through with lead-tainted water, with failing heating systems (and no cooling mechanisms for even the hottest autumn or spring days), only to sit in decrepit classrooms with no certified teachers and no books. Such a situation does not model for Detroit's youth their right to liberty or a commitment to the common good of all members of a society. Compelled to attend school, but consigned to at best inadequate learning environments, Detroit youth learn the opposite of what the Constitution's framers intended about the core democratic values of United States society. They are not only denied access to the same education opportunities of their more affluent neighbors, but also are forced to endure poor, and at times inhumane, conditions in the name of schooling.

This is not equal education; despite the *Brown v. Topeka Board of Education*, 347 U.S. 483 (1954), ruling of 64 years past, separate education remains intact in Detroit. The fact that this separate education is not racially defined *de jure* is immaterial. What matters is that educational opportunity in the State of Michigan is not equal and, in point of fact, the lines of separation for access to high-quality opportunities to learn are largely lines drawn by income and race/ethnicity. *See e.g.* Anyon, J., "Radical possibilities," (New York: Routledge) (2014); "Whither opportunity? Rising inequality, schools, and children's life chances," (Duncan, G., & Murnane, R. (Eds.), New York: Russell Sage Foundation) (2011) ("Duncan & Murnane, 2011"). The *Brown* decision rendered

separate education inherently unequal education. In this case, unequal education endures because the education offered to children and youth in Detroit is separate and distinct from children and youth in other settings and is separated on lines that our Constitution expressly prohibits.

As detailed below, *Amici* contend that the education offered to children and youth in Detroit is both separate and unequal. This is demonstrated by examining the learning opportunities, conditions, and outcomes of children and youth in Detroit. *Amici* draw upon research literature, media reports, and over 20 years of firsthand systematic observation and interviewing of Detroit schoolchildren and their teachers, all of whom had high hopes for their opportunities to teach and learn. This brief also relies upon data from conversations with Detroit administrators in both traditional and charter public schools and from administrators and teachers in suburban and exurban schools surrounding Detroit.

ARGUMENT

Amici focus herein on access to quality literacy instruction because literacy skill is essential to all learning. Even subject areas such as mathematics and music depend heavily on reading and writing skill. *Amici* do not limit their focus to literacy instruction, however, because ample evidence shows that the conditions of learning have a profound impact on how and what people learn. These conditions would not be so grievous if children and youth were not compelled to attend these

schools. To be forced to spend six to eight hours per day in substandard conditions where little to no learning occurs may seem almost punitive.

This brief is structured as follows: It begins with learning statistics and portrayals of conditions in Detroit to argue that the conditions for equal education in our nation's urban centers have not been met, in particular in terms of literacy learning. The next section explains why literacy skills matter to preserving people's inalienable rights as described in the Constitution and explains the damage done when children are not taught to be literate members of society. The brief concludes with suggestions for what needs to be done, and by whom, to change this unequal system.

I. The Promise of Equal Education in the United States

The Fourteenth Amendment of the Constitution of the United States sets forth, among other provisions, the "equal protection clause" which ensures that no state can "deny to any person within its jurisdiction the equal protection of the laws." The "equal protection" clause was the basis for the *Brown v. Topeka Board of Education*, ruling that segregated education was inherently unequal. 347 U.S. 483 (1954). Indeed, the premises of the Fourteenth Amendment and of the *Brown* decision were that if educational opportunity is offered for some children and youth in the country, then the equal protection clause demands that the education offered be of equal quality for all. As the Court stated:

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

Id. at 493.

Brown demanded that educational facilities not be separate on the basis of race, arguing,

> We conclude that, in the field of public education, the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal.

Id. at 495.

Amici contend that the conditions in most Detroit schools are so distinct from those of suburban and exurban schools in this country that they are, in effect, both separate and unequal. Moreover, the opportunity for the children and youth who live in Detroit to attend alternative schools is so minimal that it cannot be claimed that these children and their families have any choice in the matter of school selection. These children and youth cannot simply move themselves to the better schools in the suburbs that surround their city. Finally, the fact that education is

compulsory consigns Detroit children to decidedly separate and unequal opportunities to learn.

II. The Separate *and* Unequal Education in Detroit Schools

The large numbers of low-income and racial/ethnic minority student populations in Detroit represent one of the most disadvantaged student demographics in the U.S. Educational opportunity is compromised across its many traditional and charter public schools.

According to the National Assessment of Educational Progress ("NAEP"), reading scores for students in Detroit Public Schools Community District ("DPSCD") are the *lowest* in the nation.[2] Specifically, only 4% of the students in Detroit scored at or above proficient in fourth-grade reading and 7% in eighth-grade reading on the NAEP. (Scores are equally low in mathematics.) Reading (and mathematics) scores on state-administered standardized tests are also extremely low, with some schools producing no students who meet proficiency on the state reading and mathematics tests.

Reading scores at the myriad public charter schools scattered across the city of Detroit are also generally poor, although more difficult to represent with a single statistic. Moreover, it is also difficult to collect data on the largely unregulated charter schools. Long-standing public charters, however, struggle to move the

[2] *See*: https://www.nationsreportcard.gov/reading_2017

needle on children's reading (and other) scores, with typical scores on state assessments ranging anywhere from 10% of children meeting basic proficiencies to highs of 39%. This is despite clear efforts and desires on the part of teachers, leaders, and Detroit parents, who selectively choose charters over traditional public schools for their children.

The poor achievement of Detroit's schoolchildren is in part explained by the circumstances of children and youth in the city, many of whom live in extreme poverty. More than 50 percent of the families in Detroit live below the poverty line, with many schools seeing 100 percent of their students qualifying for free or reduced lunch. Indeed, the problem is so great that Detroit public schools qualify for universal meal service.

These statistics documenting low achievement in Detroit traditional and charter public schools tell only part of the story. The lack of families' access to regular and nutritious meals is mirrored by the lack of schools' access to the typical tools of teaching and learning. The few books that do exist in most schools are outdated or disintegrating; there are few up-to-date or working computers in most schools; administrators debate which teacher will get the *one* Smart Board available for the school; and the heating, ventilation, and air conditioning systems work fitfully (indeed, most schools do not have air conditioning).

In the early autumn and late spring/early summer months, children sit in sweltering classrooms. In the cold midwinter, students wear coats and mittens (making writing or page-turning a chore) to protect themselves from the frigid temperatures in their classrooms. In other schools (or sometimes in the same school) students dodge chunks of plaster as they fall from the ceiling or try to ignore the stench of mildew emanating from the flooded bathrooms down the hall. Teachers supply pencils, paper, crayons, books and even LCD projectors and computers that they have purchased to try to provide students opportunities to learn. It is, indeed a marvel that anyone can teach anything or learn anything in some of the conditions that have been observed over the last 10 years, and yet teachers and administrators continue to try to provide the best education possible under such conditions.

Not all schools are like this, of course; the infrastructure differences are a function of when buildings were built. In general, traditional public neighborhood schools—where enrollment is guaranteed—have been some of the most compromised facilities in Detroit, but public charters also struggle to offer their students the kind of conditions found in well-resourced suburban and exurban schools.

These physical conditions of schooling are outstripped only by what may be the most egregious shortage of all: teachers. During the time of emergency

management, DPSCD lost many highly qualified teachers to retirement and to better opportunities in other districts. In the last five years DPSCD has routinely struggled to hire teachers, especially in critical areas such as mathematics, sciences, second language teaching, and special education. In July of 2017 the new DPSCD superintendent was faced with a shortage of 400 teachers; by August he had whittled that shortage down to only 150 teachers, hiring 250 teachers in just a little over 30 days.[3] Moreover, 150 vacancies remained, and it is worth noting that each of those teachers interacts with anywhere from 25 to 180 students per day.[4] These shortages are experienced not only by the traditional public school districts but also the public charters; the University of Michigan teacher education program is routinely petitioned *throughout the school year* to help Detroit schools find teachers for their schools. Most recently several urban superintendents described that they now struggle even to find substitute teachers, in part because they have hired many of them to serve as teachers of record. Suburban

[3] The speed with which these 250 teachers were hired raises questions about the extent to which those 250 teachers were the best qualified for one of the most challenging teaching jobs that exists, and yet DPSCD rightly reasoned that a more stable teaching force was better than a constant churn of substitute teachers staffing anywhere from 250-1500 classrooms each day.

[4] Middle and high school teachers meet as many of 6 sections of students each day, with class sizes averaging 30 students per class. Thus, if even half of the 150 teachers are secondary school teachers, then as many as approximately 13,500 students could be experienced daily substitute teachers, who are generally not prepared to teach the content of the courses they are covering.

superintendents currently do not present these concerns over regular teacher shortages, except in a few instances of foreign language and special education teachers.

This teacher shortage is not the fault of the districts or the schools and yet it is a fact that each day that a child has an uncertified, poorly qualified, or unprepared substitute teacher is a day that a student is denied a robust opportunity to learn. Good instruction makes a difference and yet Detroit's children do not have regular access to good instruction, despite the many excellent teachers who have remained in the city. *See* Darling-Hammond, L., "Teacher quality and student achievement: A review of state policy evidence," Education Policy Analysis Archives, 8(1):1-44 (2000). They are just too few, even for a city that has lost a significant number of its school-aged population. Certified teachers, especially those in urban settings, report being underpaid, disrespected, and subjected to overwhelming scrutiny and blame for the fact that their students struggle to learn. *See* Dunn, A.H., "The Courage to leave: Wrestling with the Decision to leave teaching in uncertain times," The Urban Review, 47(1):84-103 (2015). Many certified veteran teachers find other occupations, such as delivering groceries, waiting tables, and walking dogs, more financially sustainable and less stressful in the face of lack of support and constant blame. *See* Reilly, K., "This is

What it's Like to be a Teacher in America," Time, (Sept. 13, 2018), http://time.com/5395001/teacher-in-america/.

Opportunities for students to take advanced courses (e.g., honors and Advanced Placement) are compromised by the dearth of qualified teachers, given that even general coursework is compromised by the rotation of substitute teachers each day. Approximately half of Detroit schools—traditional and charter publics alike—offer no advanced placement (AP) coursework. *See* Levin, K., "Promising Students in Detroit Lack Access to High-Level AP Classes that are Common in Suburban Schools," (Oct. 16, 2018), https://chalkbeat.org/posts/detroit/2018/10/16/promising-students-in-detroit-lack-access-to-high-level-ap-classes-that-are-common-in-suburban-schools/.

In other words, Detroit children struggle to read and write, likely because their opportunities to learn are constrained by a lack of qualified teachers, texts and other learning tools, a generally poor physical plant except in a very few settings, and by the fiscally impoverished conditions that surround their schools. It is no wonder that Detroit schools—both traditional and charter publics—struggle with problems of student transience and chronic absenteeism: Those who run schools and teach in Detroit struggle to encourage children to come to school given the lack of reliable and safe transportation options. *See* Coalition for the Future of Detroit Schoolchildren, Priority 1, "Get Serious about Attendance,"

http://detroiteducationcoalition.org/recommendations/attendance/. The problem of transience is also well documented with causes including housing instability, lack of regulation around creating new schools, and parents' desperate search to find better education for their children. Solutions offered by Detroit educators include a plea to the state to "fix the count day problem" which some suggest allows unregulated schools to "push out" challenging students after count day, but continue to receive the state funding allocation associated with those children while the schools who are required to take those students receive no funding for them. Levin, K., "Frequent School Changes are Hurting Students. Here's how Detroit's educators want to fix the problem," (Nov. 16, 2018), www.chalkbeat.org/posts/detroit/2018/11/16/frequenst-school-changes-are-hurting-students-heres-how-detroits-educators-want-to-fix-it/.

Just down the road from Detroit, however, one sees a very different picture. The students in several Michigan cities and towns experience literacy education that supports their development as literate beings and as learners. In such communities certified teachers (often veterans of several years of teaching) are provided textual resources and tools with which to teach; children who struggle to read and write are supported by literacy specialists; teachers have the professional development opportunities they require to meet student learning and socio-emotional needs; and district-supported school buses transport children from home

and back again. Not surprisingly, students succeed at higher levels as evidenced by state and national test scores. These children are more likely to progress in and through postsecondary education. And these schools and communities are enhanced as their children learn, grow, and thrive. The rich get richer, in terms of both literacy growth and economic opportunity. *See* Stanovich, K.E., "Matthew effects in reading: Some consequences of individual differences in the acquisition of literacy," Reading Research Quarterly, 21:360-407 (1986) ("Stanovich, 1986"); Duncan & Murnane, 2011.

In sum, there is gross misalignment in Detroit between children's needs and school funding and other supports for teaching and learning; as a result, literacy education is compromised and *the poor get poorer*. *Id*.

Such communities need physical infrastructures that support children, rather than physical plants that are dangerous and toxic. Such communities need both textual and technological resources to allow their children to learn at the same levels as others in more resourced communities. Such communities need state support to provide the best and the brightest teachers, fully certified expert teachers and literacy specialists who know not only how to teach basic literacy skills, but also how to remediate the literacy skills that have not been taught while simultaneously move children forward on typical growth trajectories.

III. Why Does Literacy Learning Matter for Equal Education?

Each year, indeed, each day, of delay in remediating the reading and writing struggles of these children and youth represents another year of lost opportunity. The effects of failing to develop reading and writing proficiency are cumulative and have implications beyond basic reading and writing processes. *See* Cunningham, A.E., & K.E. Stanovich, "Early reading acquisition and its relation to reading experience and ability 10 years later." Developmental Psych., 33(6):934-945 (1997). These failures are not merely a matter of a lost year; each year builds on the next and lack of literacy development stunts growth *in all other subjects*, because written language is the primary tool for communication of knowledge. Students who lack strong literacy skills can neither obtain information through written language—especially via the complex texts of the upper grades—nor can they represent their understanding of ideas through written language. Such children—and the adults they become—cannot participate as engaged community members in a democratic society, nor can they make the contributions needed for a productive and stable economy.

Specifically, as argued in "Preventing Reading Difficulties in Young Children" ("PRD"), if basic reading and writing processes are not developed in the early grades, then students' abilities to continue to develop the reading and writing skills necessary for the upper grades (4-2) will be impaired, especially if they are

expected to move at the typical pace of schooling. "Preventing reading difficulties in young children," (Snow, et al. (Eds.), Washington, DC: National Research Council) (1998) ("PRD 1998"); *see also* National Reading Panel report (National Institute of Child Health and Human Development, "Report of the National Reading Panel. Teaching children to read: An evidence-based assessment of the scientific research literature on reading and its implications for reading instruction: Reports of the subgroups," (NIH Publication No. 00-4754), Washington, DC: U.S. Government Printing Office (2000) ("NICHD, 2000"). The National Reading Panel (NRP) report underscored the critical importance of the early achievement of foundational literacy skills. For students who fail to achieve those skills, both the NRP and the PRD highlighted the critical importance of *early intervention*.

High-quality early childhood programs can produce effects on children's language, literacy, and mathematics learning, but these effects tend to fade depending on the quality of the learning experience in K-12 settings. *See* Weiland, C. & H. Yoshikawa, "Impacts of a pre-kindergarten program on children's mathematics, language, literacy, executive function, and emotional skills," Child Development, 84:2112-2130 (2013). School-based early reading intervention programs are intended to develop skills or remediate reading difficulties as early as first grade to prevent young children from moving into the downward spiral of reading difficulty in which every day that passes prevents them from maintaining

typical literacy growth and development. *See* Snow, C.E. & T.J. Matthews, "Reading and language in the early grades," The Future of Children, 26(2):57-74 (2016) ("Snow & Matthews, 2016")). It is clear from the data presented above that this has not happened in Detroit schools in the past and, more to the point, that the pattern of inadequate intervention continues.

Moreover, additional research demonstrates that early intervention models are not sufficient. *See* Biancarosa, G. & C.E. Snow, "Reading next: A vision for action and research in middle and high school literacy," A report to the Carnegie Corporation of New York. Washington, DC: Alliance for Excellent Education (2006) ("Biancarosa & Snow, 2006"). The Carnegie Corporation of New York's ("CCNY") *Time to Act* report underscored the urgency of need to continue to address literacy development beyond the primary years, even when foundation skills are well developed. Simply put, moving into grade four and beyond without establishing foundational literacy skills will impair students' abilities to gain new knowledge. *See* Carnegie Corporation Adolescent Literacy Council, "Time to act: An agenda for advancing literacy for college and career success," (New York, NY: Carnegie Corporation of New York) (2010) ("CCNY, 2010"). However, literacy instruction must continue beyond grade 4 and must attend to the literacy skills needed in each different subject area. Specifically, students with low literacy skills are not able to take on more complex reading and writing demands of the upper

grades and, especially, the content areas. *See* Biancarosa & Snow, 2006; CCNY, 2010.

Students with low literacy skills also are not able to access content knowledge through reading and writing. *See* Biancarosa & Snow, 2006. Furthermore, students with low literacy skills at the upper grades often typically must be pulled out for remediation, thus removing them from the content courses they need to develop more complex reading and writing skills. *See* Deshler, et al., "Ensuring content-area learning by secondary students with learning disabilities," Learning Disabilities Research & Practice, 16(2):96-108 (2001). Because reading and writing the complex texts of subject areas such as science, history, and even mathematics is dependent on building knowledge of and experience in those subject areas, pulling students out for remediation (or "double dosing" them with two or more of the same reading classes) threatens the development of the very knowledge youth need to become better readers and writers at the upper grades. CCNY, 2010; Pearson, et al., "Literacy and science: Each in the service of the other," Science, 328:459-463 (2010).

The process is a vicious cycle of poor reading/writing skills leading to remediation that removes students from content area instruction, which leads to even weaker reading and writing skills, a secondary school version of what Stanovich (1986) refers to as the "Matthew effect" in early reading wherein the

rich—those with stronger literacy skills—get richer (both stronger literacy skills and more content knowledge) and the poor get poorer. It is extremely difficult for students to catch up at a certain point in development because their education becomes so seriously compromised and because the students themselves often give up and drop out of school. Such students—such as those we currently see in Detroit—need extreme, and extremely thoughtful, systematically applied, and research-based measures to ensure that they can catch up. Moreover, younger students should be provided the best literacy instruction possible to ensure that they can develop the range of literacy skills necessary to move them forward. They need this attention to their literacy instruction without further delay. Too much miseducation has already occurred and too much time has already been wasted.

Falling behind in literacy also risks diminishing students' motivation to strive for literacy achievement and to learn across multiple content areas (because all subject areas—even mathematics—are dependent to some extent on print literacy skills). *See* Guthrie, J. T. & A. Wigfield, "Engagement and motivation in reading," Handbook of Reading Research, Vol. III (P.B. et al. (Eds.) Mahwah, NJ: Lawrence Erlbaum Associates), pp. 403-419 (2000). More worrisome: The negative effects of reading struggle on motivation have been documented as early as grade 1. *See e.g.*, Lepola, et al., "Development of and relationship between

phonological and motivational processes and naming speed in predicting word recognition in Grade 1," Sci. Studies of Reading, 9:367-399 (2005). This lack of motivation stems from the ceaseless struggle students face. *See* Spear-Swerling, L. & R.J. Sternberg, "The road not taken: An integrative theoretical model of reading disability," J. Learning Disabilities, 27:91-103 (1994). Imagine being asked to engage, day after day, in a skill for which—through no fault of one's own—one is ill prepared and in which one struggles mightily. A strong body of research demonstrates convincingly that few people willingly engage in activities in which they are routinely unsuccessful or feel low self-efficacy or esteem. *See* Morgan, et al., "Does early reading failure decrease children's reading motivation?," J. Learning Disabilities, 41(5):387-404 (2008). The diminishing engagement in literacy activity—a mainstay of school—can lead to diminished self-esteem or self-efficacy and to failure to complete school literacy and other content area tasks. Diminished motivation may lead to poor attendance and ultimately to sustained truancy or, worse, to dropping out of school, a chronic problem in Detroit.

IV. What Must Change to Produce Equal Access to Literacy?

The evidence presented previously of literacy skill development in Detroit suggests that those literacy skills are not well developed and that for many years little attention has been given to continued literacy development in Detroit, especially in regular classroom instruction. Furthermore, a review of the

achievement scores in reading- and writing-dependent subject areas of science and social studies further indicates the critical need for immediate and continued attention to literacy development at the upper grades.

As noted previously, many of Detroit's students live in poverty. Extensive research indicates that students who live in poverty often come to school with oral and written language skills and experiences that reflect their everyday lives, but are inadequate to the tasks they will be asked to complete in school. *See* Hart, B. & T.R. Risley, "American parenting of language-learning children: Persisting differences in family-child interactions observed in natural home environments," Developmental Psych., 28(6):1096-1105 (1992). Such students need the best literacy instruction possible. They require text-rich, highly intentional, regular literacy instruction with a focus on rich language development throughout their entire school experience. *See* Neuman, S.B., & D. Celano, "Access to print in low- and middle-income communities: An ecological study of 4 neighborhoods," Reading Research Quarterly, 36:8-26 (2001); Neuman, et al., "Education effects of a vocabulary intervention on preschoolers' word knowledge and conceptual development: A cluster-randomized trial," Reading Research Quarterly, 46:249-272 (2011); NICHD, 2000; PRD 1998; Snow & Matthews, 2016. They may also need more time in school than is currently the norm in most U.S schools. *See* Alexander, et al., "Summer learning and its implications: Insights from the

Beginning School Study," Summertime: Confronting risks, exploring solutions (R. Fairchild, & G. Noam (Eds.), San Francisco: Jossey-Bass/Wiley), pp. 33-43 (2007) ("Alexander, et al., 2007).

For children who are as far behind as the available data suggest, it is critical to provide more than regular instruction, which requires even greater expertise on the part of classroom teachers than might be necessary in settings where students are achieving at developmentally appropriate levels. In addition, expertise must be provided in specific literacy interventions, which demands expert literacy specialists (*see below*). Although many teachers in Detroit traditional and public charter schools want the best for their students, few possess the qualifications necessary to remediate the existing skill deficits that are the result of years of miseducation. National reading research reports such as the NRP and PRD underscored the need for strong teacher professional development in literacy teaching at all grade levels. So critical are proficient teachers in this process that Snow, et al., dedicated a follow-up book to the specific aspects of knowledge necessary to teach reading well across the K-12 spectrum. *See* Snow, et al., "Knowledge to support the teaching of reading: Preparing teachers for a changing world," San Francisco, CA: Jossey-Bass (2005). The detailed knowledge components identified are not in evidence among the members of the Detroit traditional or charter public school staff due to staffing shortages and nor are they

likely to be in evidence if Interim Teaching Credentials are awarded to fill teaching vacancies.

Moreover, the City has very few professionally trained reading/literacy specialists. Instructional coaches, who are working diligently to support teachers, are not qualified experts in literacy research and practice which the currently dire situation demands. With additional training, these individuals could be great assets to the schools; this seems like an obvious place for State intervention. The State could be well served to provide coherent and sustained literacy training (either via a system of coherent professional development or by supporting the pursuit of graduate-level specialized certification) for these hard-working and caring individuals. *See e.g.* Kraft, et al., "The Effect of Teacher Coaching on Instruction and Achievement: A Meta-Analysis of the Causal Evidence," Review of Educational Research, 88(4):547-588 (2018). And yet the State has not engaged teachers in rigorous and validated professional development opportunities. Every moment of delay in this regard threatens the likelihood that these children and youth will complete school and thus consigns them to another cycle of poverty.

In addition, more could be done to change the nature, intensity, or duration of students' learning opportunities, particularly in terms of the amount of time spent learning. Research on the learning losses of youth as a result of the lack of access to educational opportunity during the summer months indicates that

children and youth who live in poverty are particularly affected by summer learning loss. *See* Alexander, et al., 2007. Recent policy initiatives and school reform efforts reduce not only the spans of time that students spend away from formal education, but also use school breaks to offer expanded and enhanced learning opportunities to children and youth that are more accessible to a range of children and youth in a variety of communities. *See* "Learning time: In pursuit of educational equity," (Saunders, M., et al. (Eds.), Cambridge, MA: Harvard Education Press) (2017); Patall, et al., "Extending the school day or school year: A systematic review (1985-2009)," Review of Educational Research, 80:401-436 (2010). And yet, the State of Michigan has a law on its books that prohibits schools from starting before the Labor Day holiday; exemptions can be made, but schools must petition the state to work around that law. More and more districts and charters are applying for the waivers, but the application process is a waste of time and money. *See* Higgins, L., "Back to School Coming Earlier for More Michigan Students," Detroit Free Press, (Aug. 15, 2018), https://www.freep.com/story/news/education/2018/08/15/michigan-schools-start-early/929720002/. If the State truly values education and want to see a better future for Detroit, then the research is clear: Do what it takes to reduce summer learning loss. One suggestion is to amend the Michigan law and allow schools to use time differently. A distributed calendar must be accompanied by the other

reforms suggested, however; more of the same unequal education will not produce the education reform so desperately needed in Detroit.

In closing, it is worth noting that DPSCD at least has entered a new era, with return to a locally controlled school board and new superintendent appointed by that board. These are positive steps forward but these steps do not preclude the assistance needed from the State. Indeed, DPSCD needs more support than ever before. Decaying school infrastructure situated in a crumbling—but reviving—industrial city, combined with years of miseducation, means that DPSCD needs financial support to incentivize high-quality certified teachers to work in the district, fix crumbling buildings, offer transportation solutions for children, and hire literacy (and other) specialists to remediate the lack of proper education suffered over the past 10 years.

The State should also step in and establish a system of accountability for all charter public schools, requiring that charter publics meet specific guidelines for opening and closing school buildings. Charters should be prohibited from engaging in selective enrollment policies such as not offering specialized student services or making parental service requirements that prevent certain families from enrolling their children. Moreover, once charter publics accept students, they should be obligated to continue their education, just as traditional public schools must do for all students.

Too often the claim is made that it is too costly to develop a system that would both remedy the miseducation that has occurred and invest the necessary resources to build a robust growth-oriented system. However, the truth is that the current systems are *cost ineffective* and wasteful, not only of material resources being thrown at the issue, but also of the human resources in its care: the children and youth in this district. By making a careful plan, hiring the necessary expertise and developing the existing teaching staff, and by monitoring itself through careful data-driven planning, the State could effectively and systematically support Detroit (and other districts) in a way that would benefit the children and youth of the district.

That it is possible to build a cost-effective and impactful school system is demonstrated by the NAEP test scores (www.nationsreportcard.gov) in Massachusetts, a state that has made a coherent and systematic effort to engage in statewide education reform. 80% of fourth-grade students in Massachusetts score at or above basic levels, with 51% scoring at or above proficient levels on NAEP reading for grade 4. The city of Boston, in particular, is an excellent example of a large, socioeconomically and racially diverse setting in which clear progress has been made, with 74% of grade 4 students at or above basic and 31% at or above proficient (compared to Detroit's 29% at or above basic and 4% meeting proficiency.) The State of Michigan has the expertise, the will, and the

wherewithal to develop a systematic and coherent reform effort, but it has not yet done so. If not compelled to make the necessary investments in expertise, resources, and systems immediately, then there is little hope for the children and youth who remain tied to Detroit schools to succeed academically or in life.

Date: November 26, 2018

Respectfully submitted,

/s/ Steven Guggenheim
Steven Guggenheim
Counsel for Amicus Curiae

APPENDIX: LIST OF SIGNATORIES[5]

Name	Bio
Antrop-González, René	Dean of the School of Urban Education at Metropolitan State University in St. Paul, MN.
Anderson, Lauren, PhD	Associate professor of Education at Connecticut College. Her scholarship focuses on literacy, teacher preparation, and education policy.
Bartolini, Vicky, PhD	Professor and Chair, Education Department Wheaton College. She has worked in the public schools for 20 years and also been a professor of Education for over 25 years.
Basile, Carole G.	Dean of the Mary Lou Fulton Teachers College at Arizona State University (ASU). Prior to joining ASU, Basile was Dean and Professor in the College of Education at the University of Missouri St. Louis (UMSL).
Biegel, Stuart	Member of the emeriti faculty at UCLA where he has taught at both the Graduate School of Education & Information Studies and the School of Law for over 30 years. He is the original author of Education and the Law, West Academic Publishing (Fifth Edition, forthcoming 2019), a national textbook which is used in law schools and education schools nationwide.
Burch, Patricia, PhD	Associate Professor Education and Policy at University of Southern California.
Cartun, Ashley D., PhD	Educational scholar, teacher educator and Director of School Partnerships & Accreditation at the University of Colorado Boulder School of Education.
Carver, Cynthia, PhD	Associate professor and chair of Teacher Development and Educational Studies at Oakland University.

[5] Institutions are listed for identification purposes only.

Name	Bio
Christ, Tanya, PhD	Associate Professor of Reading and Language Arts at Oakland University in Michigan. She serves as the Community Partnership and Service Learning Coordinator for Reading and Language Arts, and Community Partnership Scholar in Residence for the School of Education and Human Services.
Cobb, Casey D., PhD	Raymond Neag Professor of Educational Policy at the University of Connecticut. He is also a National Education Policy Center Fellow and member of the Research Advisory Panel for the National Coalition on School Diversity.
Darling-Hammond, Linda	Charles E. Ducommun Professor Emeritus, Stanford University School of Education.
Del Prete, Thomas, EdD	Director of the Adam Institute for Urban Teaching and School Practice at Clark University and a founding member of the Urban Teacher Educator's Consortium.
Duke, Nell K. EdD.	Professor in the University of Michigan School of Education whose scholarly field is early literacy development, particularly among children living in poverty. She is recipient of a number of awards for her work, including the International Literacy Association William S. Gray Citation of Merit.
Dutro, Elizabeth, PhD	Professor and chair of literacy studies at the University of Colorado Boulder School of Education.

Name	Bio
Education Deans for Justice and Equity and the Urban Teacher Educators Consortium	Education Deans for Justice and Equity (EDJE) is an alliance of deans of colleges and schools of education who are committed to upholding the importance of public education in our democratic society. As a collective, we address issues of justice and equity in public policy debates, as well as in our own institutions. Among one of our guiding principles is the belief that schools and colleges of education have a moral responsibility to listen to and learn from communities that have not been well-served by public education in order to advocate for the well-being and dignity of all children, families, and communities.
Edley, Christopher	President and Co-Founder, Hon. William H. Orrick, Jr. Professor of Law, and Former Dean U.C. Berkeley School of Law The Opportunity Institute.
Endo, Rachel	Founding Dean and a Professor in the School of Education at the University of Washington Tacoma.
Escamilla, Kathy, PhD	Professor in the School of Education at the University of Colorado, Boulder.
Fine, Michelle	The Graduate Center, The City University of New York.
Finnigan, Kara S., PhD	Professor of educational policy at the University of Rochester's Warner School of Education and Human Development.
Gandara, Patricia	Emerita Professor and Co-Director of the Civil Rights Project at UCLA. She is a fellow of the American Educational Research Association and an elected member of the National Academy of Education.

Name	Bio
Gutierrez, Kris	Carol Liu Professor in Educational Policy and Learning Sciences and Human Development in the Graduate School of Education at the University of California Berkeley. Gutiérrez is a member of the National Academy of Education, past president of the American Educational Research Association, and former Vice-Chair of the Institute of Educational Sciences, U.S. Department of Education.
Hand, Victoria M., PhD	Associate professor of mathematics education at the University of Colorado Boulder School of Education.
Hannafin, Bob, PhD	Dean and professor at Fairfield University's Graduate School of Education and Allied Professions, which focuses on teacher education and the behavioral health fields. He is a founding member of Education Deans for Justice and Equity.
Hantzopoulos, Maria	Chair and Associate Professor of Education at Vassar College.
Hilton, Kelly, PhD	Past President of the American Educational Studies Association and Chair of the Educational Studies Department at Davidson College.
Hull, Glynda	Elizabeth H. and Eugene A. Shurtleff Chair in Undergraduate Education at the University of California, Berkeley. A member of the National Academy of Education, Hull is a professor in Learning Sciences and Human Development at the Graduate School of Education at Berkeley.
Jennings, Louise	Professor in the School of Education at Colorado State University.
Kim, Robert	William T. Grant Distinguished Fellow at Rutgers University and a former deputy assistant secretary in the U.S. Department of Education Office for Civil Rights.

Name	Bio
Kirkland, David E. PhD	Executive Director of New York University's Metropolitan Center for Research on Equity and the Transformation of Schools/Associate Professor of English and Urban Education.
Ladd, Helen	Susan B. King Professor Emerita of Public Policy and Economics, Sanford School of Public Policy, Duke University and Affiliate of the Center for Child and Family Policy.
Lopez, Francesca, PhD	Professor of education policy at the University of Arizona College of Education. She is the Ernest W. McFarland Distinguished Professor in Leadership for Education Policy and Reform and directs the University of Arizona's College of Education Policy Center, which connects policy research to policymakers and the community.
Lose, Mary K., EdD	Professor of Reading and Language Arts and Director of the Reading Recovery Center of Michigan at Oakland University.
Lugg, Catherine A., PhD	Professor of education at the Graduate School of Education, Rutgers University. She is also a fellow with the National Education Policy Center, which works to bring the expertise of scholars into policy discussions.
Masingila, Joanna O., PhD	Dean and professor at the Syracuse University School of Education.
McIntyre, Ellen	Dean and professor at the University of North Carolina Charlotte whose scholarly fields are literacy and teacher preparation. She is a member of Deans for Impact and serves on the North Carolina Professional Educator Preparation and Standards Commission and the UNC Early Literacy Educator Preparation Commission.

Name	Bio
Mensah, Felicia Moore	Associate dean and professor of science education in the Department of Mathematics, Science and Technology at the Teachers College, Columbia University.
Meyer, Elizabeth, PhD	Professor of policy and former Associate Dean of Teacher Education at the University of Colorado Boulder School of Education. She is also a Fellow at the National Education Policy Center, which works to bring the expertise of scholars into policy discussions.
Michaels, Sarah, PhD	Professor of education and Senior Research Scholar at the Hiatt Center for Urban Education at Clark University. She received AERA's Division G (2018) lifetime achievement award for research on the social contexts of education.
Moje, Elizabeth, PhD	Dean for the School of Education, the George Herbert Mead Collegiate Professor of Education, and an Arthur F. Thurnau Professor in the School of Education at the University of Michigan. She is a faculty associate in the Institute for Social Research and in the Latino/a Studies program. She is also a member of the National Academy of Education, where she chairs the Professional Development Committee.
NCTE Black Caucus	The National Council of Teachers of English promotes the development of literacy, the use of language to construct personal and public worlds and to achieve full participation in society, through the learning and teaching of English and the related arts and sciences of language. Since its founding in 1970, the continuing mission of the Black Caucus has been to enhance the professional welfare of English language arts professionals of African descent, who work on all levels, from kindergarten through graduate school, who are members of NCTE and CCCC, and who are committed to Black students and scholars experiencing success in English language arts.

Name	Bio
Noguera, Pedro A., PhD	Distinguished Professor of Education Faculty Director, Center for the Transformation of Schools UCLA Graduate School of Education & Information Studies.
Nogueron-Liu, Silvia, PhD	Assistant professor in Literacy Studies at the University of Colorado-Boulder, School of Education.
NYU Metro Center	The New York University's Metro Center promotes equity and opportunity in education through engaged science work: applied research, program evaluation, policy analysis, community engagement, and professional assistance to educational, governmental, and community agencies serving vulnerable populations. NYU Metro Center is mission driven, as spelled out in our theory of action and logic model.
Oakes, Jeannie	Senior Fellow, Learning Policy Institute Presidential Professor Emeritus, UCLA.
Pavonetti, Linda, EdD	Chair of the Reading and Language Arts Department and professor at the Oakland University School of Education and Human Services.
Pearson, David	Former Dean of Education at UIUC and UCB, and former co-director of the Center for the Study of Reading (UIUC) and the Center for the Improvement of Early Reading Achievement (MSU), is the Evelyn Lois Corey Emeritus Professor of Instructional Science in the Graduate School of Education at UC Berkeley.
Penuel, William	Professor of Learning Sciences and Human Development School of Education University of Colorado Boulder.
Powers, Jeanne M., PhD	Associate professor of education policy and evaluation in the Mary Lou Fulton Teachers College, Arizona State University.

Name	Bio
Reardon, Sean F.	Professor of poverty and inequality in education; Professor of Sociology, Stanford University.
Rios, Francisco, PhD	Professor (and former Dean) in the College of Education at Western Washington University.
Rogers, John, PhD	Professor of Education at UCLA. Director of UCLA's Institute for Democracy, Education, and Access. Faculty director of Center X, the center which houses UCLA's teacher education program, principal training institute, and professional development initiatives.
Rumberger, Russell	Professor Emeritus in the Department of Education, University of California, Santa Barbara. He served as a member of the National Research Council's Committee on Increasing High School Students' Engagement and Motivation to Learn. He was chair of the U.S. Department of Education, Institute of Education Sciences panel that produced the *Preventing Dropout in Secondary Schools Practice Guide* (2017). He also directs the California Dropout Research Project. Fellow of the American Educational Research Association and received the Elizabeth G. Cohen Distinguished Career in Applied Sociology of Education Award, Sociology of Education SIG, American Educational Research Association. Elected to the National Academy of Education.
Santoro, Doris, EdD	Associate professor in and chair of the education department at Bowdoin College. She is a senior associate editor for the American Journal of Education and a fellow with the National Education Policy Center.
Shultz, Katherine, PhD	Dean and professor at the University of Colorado Boulder School of Education whose scholarly fields are literacy and teacher education.
Silver, David, PhD	Vice President, Education at IMPAQ International, LLC.

Name	Bio
Smith, Gregory, PhD	Professor Emeritus at the Graduate School of Education and Counseling, Lewis & Clark College, Portland, Oregon; fellow of the National Education Policy Center; Board Member of the Great Lakes Stewardship Initiative; member of the Education Advisory Committee of the Teton Science Schools.
Snow, Catherine	Patricia Albjerg Graham Professor at the Harvard Graduate School of Education. She chaired the National Academy of Science committee that produced Preventing Reading Difficulties in Young Children, and the Rand Reading Study Group, which Produced Reading for Understanding: Toward an R and D Program in Reading Comprehension.
Taylor, Monica, PhD	Professor in the Department of Secondary and Special Education at Montclair State University.
The Urban Teacher Education Consortium (UTEC)	National group of teacher educators, from over 20 public and private colleges and universities, who have joined together to understand how best to prepare prospective teachers to work in urban P-12 schools. The group meets once a year to exchange information and research-based knowledge about how to structure and enact teacher education programs that are committed to teacher preparation for urban contexts. In particular, we share common understandings of the strengths and potentials of students and their families who live in urban settings.
Thomas, Paul. EdD	Professor at Furman University Education.
Traugh, Cecelia, PhD	Dean of the Graduate School at Bank Street College of Education whose scholarly field is teacher education. She is a founding member of Urban Teacher Educators Consortium.
Tuan, Mia	Dean and Professor at the University of Washington College of Education.

Name	Bio
Valladares, Michelle Renée, PhD	Associate director of the National Education Policy Center, and a Faculty Affiliate at the University of Colorado Boulder School of Education.
Welner, Kevin G., JD, PhD	Professor of policy at the University of Colorado Boulder School of Education. He also directs the National Education Policy Center, which works to bring the expertise of scholars into policy discussions.
Wilson, Terry, PhD	Assistant Professor in the School of Education at the University of Colorado Boulder School of Education.
Young, Lydia, PhD	Associate dean and associate teaching professor at Northeastern University's Graduate School of Education.
Zeichner, Ken	Boeing Professor of Teacher Education Emeritus, expert in urban education. Member of the National Academy of Education, and Fellow of the American Educational Research Education.

CERTIFICATE OF SERVICE

I hereby certify that counsel for the parties have been served with a true and correct copy of the above and foregoing document via the Court's CM/ECF system on November 26, 2018.

Respectfully submitted,

/s/ Steven Guggenheim
Steven Guggenheim

Counsel for Amicus Curiae

CERTIFICATE OF COMPLIANCE

I certify that this motion complies with Fed. R. App. P. 27(d)(2) and contains 6,491 words. I also certify that this motion complies with the typeface requirements of Fed. R. App. P. 27 and Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been composed in proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman font.

Date: November 26, 2018

Respectfully submitted,

/s/ Steven Guggenheim
Steven Guggenheim
Counsel for Amicus Curiae