

SUPREME COURT OF THE
STATE OF CONNECTICUT

S.C. 18032

CONNECTICUT COALITION FOR JUSTICE IN
EDUCATION FUNDING, ET AL.

V.

GOVERNOR M. JODI RELL, ET AL.

BRIEF OF *AMICI CURIAE*
THE CAMPAIGN FOR EDUCATIONAL EQUITY, TEACHERS COLLEGE, COLUMBIA
UNIVERSITY, THE NATIONAL ACCESS NETWORK AND
THE EDUCATION LAW CENTER

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INTERESTS OF AMICI CURIAE

The Campaign for Educational Equity at Teachers College, Columbia University (“the Equity Campaign”), the Access Network (“Access”) and the Education Law Center (“ELC”) are three non-profit organizations dedicated to improving adequacy and equity in education.

The Equity Campaign is committed to expanding and strengthening the national movement for quality public education for all by providing research-based analyses of key education policy issues. The Equity Campaign promotes educational equity through focused research, convening of major symposium and conferences, development of policy positions on major issues involving equity in education, and demonstrations of improved policy and practice.

Access is affiliated with the Equity Campaign and also based at Teachers College, Columbia University. Access’ mission is to provide up-to-date information on developments regarding fiscal equity reform, fiscal equity litigations and education adequacy litigations to researchers, policymakers, advocates and attorneys throughout the United States. Access operates a website (www.schoolfunding.info) which is the primary source in the country for up-to-date information on litigation, remedies (including cost studies), methods for public engagement on educational equity and educational adequacy issues. Access assists those promoting education and school funding reform through workshops, conferences, consultations, and periodic e-newsletters. Michael A. Rebell is the Executive Director of both the Equity Campaign and Access. Mr. Rebell also was lead counsel for plaintiffs in New York’s educational adequacy litigation, *CFE v. State of New York*, 86 N.Y.2d 475 (1995).

ELC is a not-for-profit organization based in New Jersey. ELC litigated the New Jersey education adequacy case, *Abbott v. Burke*, 119 N.J. 287 (1990), and advocates on behalf of public school children for access to an equal and adequate education under state and federal laws. ELC's work is based on a core value: if given the opportunity, all children can achieve high academic standards to prepare them for citizenship and to compete in the economy. ELC focuses on improving public education for disadvantaged children, and children with disabilities and other special needs. ELC uses a wide variety of strategies, including public education and engagement, policy initiatives, research, communications and, as a last resort, legal action.

Because of its nationwide expertise in school finance, preschool, facilities, and other areas of education law and policy, ELC has recently established Education Justice (EdJustice), a national program to advance education equity. EdJustice will collect and disseminate research, develop strategies, and provide information and technical assistance to policymakers, attorneys and other advocates seeking to improve public schools across the nation, especially those schools serving concentrations of low-income students and students of color.

PRELIMINARY STATEMENT

The question of whether schoolchildren have a substantive constitutional right to a “suitable” or “adequate” education is a matter of first impression in Connecticut. However, the issue has previously been considered by a majority of courts in other states. Twenty-seven states have reviewed this issue on its merits,¹ and twenty of those states have held that plaintiffs indeed have such a substantive constitutional right.

The trial court here held that these constitutional issues are justiciable, as it was bound to do by this Court’s holdings in *Horton v. Meskill*, 172 Conn. 615, 626-27 (1977) and *Sheff v. O’Neill*, 238 Conn. 1, 13-16 (1996). Nevertheless, the Superior Court refused to allow plaintiffs to proceed to trial to establish the contours of the constitutional right and whether, on the facts alleged, it had been violated. Instead, the trial court granted defendants’ motion to strike, holding that the question of the “suitability” of the education being provided to school children in Connecticut would require the court to encroach deeply “into the constitutional prerogatives of the other branches of state government.” Memorandum of Decision (“MOD”) at 35. These separation of power concerns echo the “political question” aspect of the justiciability doctrine as outlined in *Baker v. Carr*, 369 U.S. 186 (1962). But – having ruled that the right to an opportunity for a “suitable education” is a justiciable issue – there was no proper basis for the trial court to have denied plaintiffs the right to proceed to trial on these “political question” grounds.

The purpose of the present brief of *amicus curiae* is to bring to the Court’s attention the rulings and remedial experiences of the overwhelming majority of state courts, which have enforced the constitutional right to an adequate education without encroaching on the

¹ The seven courts that have denied relief to the plaintiffs refused to reach the question because of justiciability or separation of powers concerns (a route the trial court here expressly denounced).

constitutional prerogatives of the legislative and executive branches. Based on their extensive research, analysis and involvement in education adequacy litigations across the country, *amici* will first discuss why every state highest court that has deemed these issues justiciable and closely examined the facts has held that students do indeed have a substantive constitutional right to an adequate or “suitable” educational opportunity. *Amici* will also discuss in detail relevant aspects of the recent litigation in the neighboring state of New York. In particular, *amici* will examine the New York Court of Appeals’ decision to reject a motion to dismiss plaintiffs’ adequacy claims, which involved procedural issues strikingly similar to those at issue on the present appeal. Finally, this brief will demonstrate how courts in sister states, including New York, have worked effectively with the legislative and executive branches to devise practical and successful remedies in education adequacy cases.

ARGUMENT

I. EVERY STATE HIGHEST COURT THAT HAS EXAMINED THE ISSUE HAS HELD THAT STUDENTS HAVE A SUBSTANTIVE CONSTITUTIONAL RIGHT TO AN ADEQUATE OR ‘SUITABLE’ EDUCATIONAL OPPORTUNITY.

A. Decisions in Sister States Overwhelmingly Support Plaintiffs’ Position.

More than thirty years ago, in a case involving inequities in the educational opportunities available to children in property-poor school districts, the United States Supreme Court held that education is not a “fundamental interest” under the federal constitution. *San Antonio Indep. Sch. Dist v. Rodriguez*, 411 U.S. 1 (1973). Education is, however, considered a fundamental interest under most state constitutions,² including that of Connecticut. *Horton v. Meskill*, 172 Conn. 615, 645 (1977). Accordingly, over the past

² See, e.g., *Serrano v. Priest*, 487 P.2d 1241, 1250 (Cal. 1971); *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 206 (Ky. 1989); *Leandro v. State*, 488 S.E.2d 249, 255 (N.C. 1997).

three decades, in what has been described as the most dynamic demonstration of independent state court constitutional development in American history,³ constitutional challenges to the inequitable and inadequate funding of public education have been litigated in the state courts of 45 of the 50 states.⁴

In the early years, most of these cases, including this Court's decision in *Horton*, 172 Conn. at 626-27, were based on "equity" claims that challenged disparities in the levels of expenditure among different school districts on equal protection grounds. Since 1989, most of the cases have been based on "adequate education" claims where plaintiffs argue that state education clauses like article eighth, § 1 of the Connecticut Constitution guarantee students some basic or "adequate" level of public education. Since the current wave of adequacy litigations began, the courts have upheld plaintiffs' claims at an accelerating rate: plaintiffs have prevailed in almost 75% (20 of 27) of the final state court decisions in education adequacy cases decided since 1989.⁵

³ See, e.g., Paul D. Kahn, *State Constitutionalism and the Problems of Fairness*, 30 VAL. U. L. REV. 459, 464-70 (1996)

⁴ An up-to-date tabulation of the status of state court fiscal equity and education adequacy decisions is maintained on the website of the Access Project of the Campaign for Educational Equity, www.schoolfunding.info.

⁵ Specifically, plaintiffs have prevailed in major liability decisions of the highest state courts or final trial court actions in the following 20 states: **Alaska**: *Kasayulie v. State*, No. 3AN-97-3782 (Alaska Super. Ct. Sept. 1, 1999) (A27); **Arizona**: *Roosevelt Elementary Sch. Dist. No. 66 v. Bishop*, 877 P.2d 806 (Ariz. 1994); **Arkansas**: *Tucker v. Lake View Sch. Dist. No. 25*, 917 S.W.2d 530 (Ark. 1996); see also *Lake View Sch. Dist. No. 25 v. Huckabee*, No. 1992-5318 (Pulaski County Ch. 2001) (A57) (equity and adequacy claims upheld and school funding system invalidated); *Lake View Sch. Dist. No. 25 v. Huckabee*, 10 S.W.3d 892 (Ark. 2000) (pending appeal claims from prior case mooted by enactment of new funding statute); **Idaho**: *Idaho Schs. for Equal Educ. Opportunity*, 976 P.2d 913 (Idaho 1998); *Idaho Schs. for Equal Educ. Opportunity v. Evans*, 850 P.2d 724 (Idaho 1993)); **Kansas**: *Montoy v. State*, 120 P.3d 306 (Kan. 2005); **Kentucky**: *Rose v. Council for Better Educ.*, 790 S.W.2d 186 (Ky. 1989); **Maryland**: *Bradford v. Md. State Bd. of Educ.*, No. 94340058/CE189672 (Baltimore City Cir. Ct. 2000) (A1); **Massachusetts**: *McDuffy v. Secretary of the Executive Office of Educ.*, 615 N.E.2d 516 (Mass. 1993)); **Montana**:

