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LATINO ACTION NETWORK; NAACP NEW JERSEY STATE CONFERENCE; LATINO COALITION; URBAN LEAGUE OF ESSEX COUNTY; THE UNITED METHODIST CHURCH OF GREATER NEW JERSEY; MACKENZIE WICKS, a minor, by her Guardian Ad Litem, COURTNEY WICKS; MAISON ANTIONE TYREL TORRES, a minor, by his Guardian Ad Litem, JENNIFER TORRES; MALI AYALA RUEL-FEDEE, a minor, by his Guardian Ad Litem, RACHEL RUEL; RANAYA ALSTON, a minor, by her Guardian Ad Litem, YVETTE ALSTON-JOHNSON; RAYAHN ALSTON, a minor, by his Guardian Ad Litem, YVETTE ALSTON-JOHNSON; ALAYSA POWELL, a minor, by her Guardian Ad Litem, RASHEEDA ALSTON; DASHAWN SIMMS, a minor, by his Guardian Ad Litem, ANDREA HAYES; DANIEL R. LORENZ, a minor, by his Guardian Ad Litem, MARIA LORENZ; MICHAEL WEILL-WHITEN, a minor, by his Guardian Ad Litem, ELIZABETH WEILL-GREENBERG

Plaintiffs,

v.

THE STATE OF NEW JERSEY; NEW JERSEY STATE BOARD OF EDUCATION; and LAMONT REPOLLET, Acting Commissioner, State Department of Education,

Defendants.

SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MERCER COUNTY

DOCKET NO:

Civil Action

COMPLAINT FOR DECLARATORY JUDGMENT AND OTHER RELIEF

I. INTRODUCTION

1. Segregation by race, ethnicity and poverty in New Jersey's public schools harms our State's students. Although New Jersey is an extremely diverse State, this segregation—among the worst in the country—undermines our system of public education and threatens our State's future. The State has been complicit in the creation and persistence of school segregation because it has adopted and implemented laws, policies, and practices that require, with very limited exceptions, students to attend public schools in the municipalities where they live. This municipally-based system of school districts interacts with longstanding State practices that have fostered and enabled residential segregation to institutionalize school segregation. Because educational opportunity is, as a result, undermined for students in schools that are often characterized by intense poverty and social isolation in numerous, well-documented ways, these segregative State laws, policies, and practices deny an alarming number of Black and Latino students the benefits of a thorough and efficient education. These segregative State laws, policies and practices also violate those students' constitutional rights under other provisions of the New Jersey Constitution that prohibit racial segregation in public schools and guarantee all New Jersey residents the equal protection of the laws.

2. School segregation harms all students, including white students, by creating homogeneous learning and social environments. Given the narrowness of their social experiences, students in segregated schools are at greater risk of adopting prejudicial views because rejection of stereotypes, and comfort in interactions across racial lines, are predicated on

cross-racial contact.[1] The dynamics of segregation thus produce a two-way system of racial stereotyping, stigma, fear, and hostility that obscures individuality and denies all concerned the recognized benefits of diversity in education.

3. Sixty-four years ago today, the United States Supreme Court in *Brown v. Board of Education of Topeka*, 347 U.S. 483, 493, 495 (1954), ruled government-mandated segregation of students unconstitutional, concluding that "[s]eparate educational facilities are inherently unequal." As set forth below, *de facto* racial segregation has repeatedly been determined by the New Jersey Supreme Court to violate the New Jersey Constitution

II. PARTIES

4. Plaintiff the Latino Action Network (LAN) is a non-profit corporation within the meaning of 26 U.S.C. § 501(c)(4) that is organized and exists under the laws of the State of New Jersey, with its principal office located at 88A East Blackwell Street, Dover, New Jersey, 07801. LAN develops and advocates for legislation, regulations, and government programs aimed at improving the social welfare of Latinos in the State of New Jersey and beyond. LAN also researches and publishes information regarding the positions of elected officials concerning issues of significance to the Latino community.

5. Plaintiff the NAACP New Jersey State Conference (NAACP) is an affiliate of the National Association for the Advancement of Colored People, a non-profit corporation within

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[1] *See* Appendix to Appellants' Briefs, *Brown v. Bd. of Education, Appendix to Appellants' Briefs*, 347 U.S. 483, 1952 WL 47265, at *6-8; Roslyn A. Mickelson & Mokubung Nkomo, *Integrated Schooling, Life Course Outcomes, and Social Cohesion in Multiethnic Democratic Societies*, *in* Review of Research in Education, Vol. 36, at 197, 210-12, 218-19, 221-22, March 2012; Thomas F. Pettigrew & Linda R. Tropp, *A Meta-Analytic Test of Intergroup Contact Theory*, J. of Personality and Social Psych., Vol. 90, No. 5, at 765-67, 2006; Michal Kurlaender & John T. Yun, *Fifty Years after Brown: New Evidence of the Impact of School Racial Composition on Student Outcomes*, Int'l J. of Educ. Policy, Vol. 6, No. 1, at 57-65, 69-70, Spring 2005.

the meaning of 26 U.S.C. § 501(c)(3) that is organized and exists under the laws of the State of New York with its National Headquarters located at 4805 Mount Hope Drive, Baltimore, Maryland, 21215. The mission of the NAACP is to ensure the political, educational, social, and economic equality of rights of all persons and to eliminate racial discrimination.

6. Plaintiff the Latino Coalition (LC) is a non-profit corporation within the meaning of 26 U.S.C. § 501(c)(4) that is organized and exists under the laws of the State of New Jersey, with its principal office located at 47 Chandler Avenue, Keyport, New Jersey, 07735. LC advocates with regard to issues affecting the Latino community in New Jersey and organizes and performs community service for the same population.

7. Plaintiff the Urban League of Essex County is a non-profit corporation within the meaning of 26 U.S.C. § 501(c)(3) that is organized and exists under the laws of the State of New Jersey with its principal office located at 508 Central Avenue, Newark, New Jersey, 07107. The mission of the Urban League of Essex County is to assist African Americans and disadvantaged urban residents in the achievement of social and economic self-sufficiency.

8. Plaintiff The United Methodist Church of Greater New Jersey (GNJUMC) is a non-profit corporation within the meaning of 26 U.S.C. § 501(c)(3) that is organized and exists under the laws of the State of New Jersey, with its principal office located at 205 Jumping Brook Road, Neptune City, New Jersey, 07753. The mission of GNJUMC is informed by the Church's long history of concern for social justice. Its principles include the Church's effort to speak to contemporary issues through a biblical and theological lens, seeking to apply its vision of righteousness to social, economic, and political issues.

9. Plaintiff Mackenzie Wicks is a 14 year old Black child who resides in Hoboken, New Jersey. She is represented in this action by her mother Courtney Wicks as Guardian Ad Litem. Mackenzie is enrolled in the 8th grade at Hoboken Middle School.

10. Plaintiff Maison Antione Tyrel Torres is a 12 year old Latino child who resides in Camden, New Jersey. He is represented in this action by his mother Jennifer Torres as Guardian Ad Litem. Maison is enrolled in the 6th Grade at Octavius V. Catto School in Camden.

11. Plaintiff Mali Ayala Ruel-Fedee is a 10 year old Black child who resides in Union City, New Jersey. He is represented in this action by his mother Rachel Ruel as Guardian Ad Litem. Mali is enrolled in the 4th Grade at Colin Powell Elementary School in Union City.

12. Plaintiff Ranaya Alston is a 16 year old Black child who resides in Paterson, New Jersey. She is represented in this action by her grandmother Yvette Alston-Johnson as Guardian Ad Litem. Ranaya is enrolled in the 10th Grade at Paterson Eastside High School.

13. Plaintiff Rayahn Alston is an 11 year old Black child who resides in Paterson, New Jersey. He is represented in this action by his grandmother Yvette Alston-Johnson as Guardian Ad Litem. Rayahn is enrolled in the 5th Grade at PS 16 in Paterson.

14. Plaintiff Alaysa Powell is a 14 year old Black child who resides in Paterson, New Jersey. She is represented in this action by her mother Rasheeda Alston as Guardian Ad Litem. Alaysa is enrolled in the 9th Grade at Paterson Eastside High School.

15. Plaintiff Dashawn Simms is a 17 year old Black child who resides in Newark, New Jersey. He is represented in this action by his mother Andrea Hayes as Guardian Ad Litem. Dashawn is enrolled in the 11th Grade at American History High School in Newark.

16. Plaintiff Daniel R. Lorenz is an 8 year old Latino child who resides in Elizabeth,

New Jersey. He is represented in this action by his mother, Maria Lorenz, as Guardian Ad Litem. Daniel is enrolled in the 2nd Grade at Dr. Albert Einstein Academy in Elizabeth.

17. Plaintiff Michael Weill-Whiten is a 5 year old white child who resides in Highland Park, New Jersey. He is represented in this action by his mother, Elizabeth Weill-Greenberg as Guardian Ad Litem. Michael will be enrolled in September 2018 in the Irving Primary School in Highland Park.

18. Defendant the State of New Jersey is the governmental entity responsible for the creation, interpretation and enforcement of laws for the benefit of New Jersey's residents. The government of the State of New Jersey is dispersed across many places of business, but is seated in the State's capital, Trenton.

19. Defendant the New Jersey State Board of Education, also located in Trenton, New Jersey, is responsible for "[t]he general supervision and control of public education in this state," as a result of which the Board "shall formulate plans and make recommendations for the unified, continuous and efficient development of public education, other than higher education, of people of all ages within the state." N.J.S.A. 18A:4-10.

20. Defendant Lamont Repollet is the Acting Commissioner of the New Jersey Department of Education with the broad power and duty to ensure the thoroughness and effectiveness of all the state's public schools—including, in particular, his "obligation to take affirmative steps to eliminate racial imbalance, regardless of its causes"[2]— and otherwise to ensure that the state's system of public education complies with the Constitution and laws of the

[2] *See Jenkins v. Township of Morris Sch. Dist.*, 58 N.J. 483, 506 (1971) (internal quotation marks omitted).

State. As Acting Commissioner, Defendant Repollet is "the official agent of the State Board [of Education] for all purposes," N.J.S.A. 18A:4-22(b), and is responsible for, among other things, reporting monthly and annually to the State Board with "suggestions and recommendations for the improvement of the schools and the advancement of public education within the state," N.J.S.A. 18A:4-40. Defendant Repollet's principal office is located at 100 River View Plaza, Trenton, New Jersey, 08625.

III. JURISDICTION AND VENUE

21. Jurisdiction and venue are proper in this Court pursuant to N.J.S.A. 2A:16-50 *et seq.*, the Declaratory Judgment Act, and New Jersey Court Rule 4:3-2, respectively.

IV. NEW JERSEY'S SEGREGATION PROBLEM

a. *All Public Schools*

22. New Jersey currently operates one of the most segregated public school systems in the nation—a school system that knowingly separates Black and Latino children by race and ethnicity and segregates White students in predominantly White districts.[3]

23. During the 2016-17 school year, New Jersey had 674 school districts, 2,514 schools and 1, 373, 267 students. Of those students, 622,089 were White (45.3%); 372,155 were Latino (27.2%); 212,856 were Black (15.5%); 135, 953 were Asian (9.9%); 28,838 identified

[3] According to a November 2017 report, New Jersey has the 6th highest rate of segregation of black students among the States, and the 7th highest with respect to Latinos. Gary Orfield, *et al.*, *New Jersey's Segregated Schools: Trends and Paths Forward* 6 (UCLA Civil Rights Project 2017), https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/new-jerseys-segregated-schools-trends-and-paths-forward/New-Jersey-report-final-110917.pdf; *see also* Greg Flaxman, *et al.*, *A Status Quo of Segregation: Racial and Economic Imbalance in New Jersey Schools, 1989-2010* 13 (UCLA Civil Rights Project 2013), https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/a-status-quo-of-segregation-racial-and-economic-imbalance-in-new-jersey-schools-1989-2010/Norflet_NJ_Final_101013_POSTb.pdf.

themselves as a member of some other racial or ethnic group (2.1%); and 521,576 were low-income (38%). Paul Tractenberg and Ryan Coughlan, *The New Promise of School Integration and the Old Problem of Extreme Segregation: An Action Plan for New Jersey to Address Both* 15 (Center on Diversity and Equality in Education 2018).

24. There are 52,959 Black students in New Jersey who attend public schools that are over 99% non-White. This constitutes 24.9% of the 212,856 Black public school students statewide. A further 51,900 Black students (24.4%), attend public schools in which the percentage of Black and Latino students exceeds 90%. In the aggregate, 131,418 Black students, or 61.7% attend schools that are 80% or more non-White, while the number of Black students attending schools that are more than 75% non-White is 140,679, or 66.1% *Id.* at_17.

25. Of the approximately 372,155 Latino students in the New Jersey public school system, 53,354 (14.3%) attend schools that are at least 99% non-White, while 112,529 (30.2%) attend schools where the non-White enrollment is 90% or higher. In the aggregate, 218,194 Latino students (58.6%) attend schools that are more than 80% non-White, and 230,564 Latino students (62.0%) attend schools that are more than 75% non-White. *Id.*.

26. This pattern is worsening: the number of New Jersey public school students who attend schools that are at least 99% non-White has increased from 93,614 in the 2010-11 school year to 107,322 in 2016-17. *Id.*.

27. Of the approximately 585,000 Black and Latino public school students in New Jersey, approximately 371,243 students (about 63% of all Black and Latino students) attend schools that are more than 75% non-White. And in the aggregate, 271,000 (46%) of the 585,000 Black and Latino students attend schools that are more than 90% non-White. *Id.*

28. For example, during the 2015-16 school year, 68 public schools in Paterson, Newark and Camden—all of which have been or are under State control—educating over 30,000 students total, are schools with zero to 1% White students. The following table reveals the concentration of these "highly segregated" schools enrolling at least 99% non-White students[4] in three of the four school districts controlled by the State:

	Total Highly Segregated Schools	Total schools	Percent Highly Segregated Schools	Total Students in Highly Segregated Schools	Total students	Percent Students in Highly Segregated Schools
Camden	18	24	75%	6,269	9,294	67.5%
Newark	33	65	50.8%	15,594	36,035	43.3%
Paterson	17	50	34%	8,264	25,038	33%

29. The concentration and isolation of Black and Latino students into certain public schools means that White students are predominantly enrolled alongside other White students. Of the 622,359 White students attending public school in New Jersey, 39,397 (6.3%) attend schools that are at least 90% White, 194,961 (31.4%) attend schools that are at least 80% White, and 266,251 (42.8 %) attend schools that are at least 75% White.

b. *Charter Schools*

[4] In the literature, these schools are often referred to as "apartheid schools." The term was coined by Gary Orfield and is defined as "schools serving a population with 0% to 1% white students." *See* Gary Orfield, *et al.*, *New Jersey's Segregated Schools: Trends and Paths Forward* 15 (UCLA Civil Rights Project 2017), https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/new-jerseys-segregated-schools-trends-and-paths-forward/New-Jersey-report-final-110917.pdf; *see also* Greg Flaxman, *et al.*, *A Status Quo of Segregation: Racial and Economic Imbalance in New Jersey Schools, 1989-2010* 8 (UCLA Civil Rights Project 2013), https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/a-status-quo-of-segregation-racial-and-economic-imbalance-in-new-jersey-schools-1989-2010/Norflet_NJ_Final_101013_POSTb.pdf.; Paul Tractenberg, *et al.*, *New Jersey's Apartheid and Intensely Segregated Urban Schools* 5 (Institute on Education Law and Policy at Rutgers University-Newark 2013), http://ielp.rutgers.edu/docs/IELP%20final%20report%20on%20apartheid%20schools%20101013.pdf.; Gary Orfield & Chungmei Lee, *Brown At 50: King's Dream or Plessy's Nightmare?* 11 (Harvard Civil Rights Project 2004), https://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/brown-at-50-king2019s-dream-or-plessy2019s-nightmare/orfield-brown-50-2004.pdf.

30. Pursuant to the Charter School Program Act of 1995, N.J.S.A. 18A:36A-1 to -18, the State has authorized the establishment of charter schools "as part of [the] State's program of public education." N.J.S.A. 18A:36A-2. The Act and regulations adopted by the State Board of Education pursuant thereto require that charter schools, subject to certain exceptions, be located within the municipality that constitutes their districts of residence, N.J.A.C. 6A:11-2.1(l), and that charter schools give preference in enrollment to students who reside in their charter's respective districts of residence, N.J.S.A. 36A-8.

31. Because charter schools are thus required to give priority in enrollment to students who reside in their respective districts, and because they tend to be located predominantly in intensely segregated urban school districts, New Jersey's charter schools exhibit a degree of intense racial and socioeconomic segregation comparable to or even worse than that of the most intensely segregated urban public schools. Indeed, 73% of the state's 88 charter schools have less than 10% White students and 81.5% of charter school students attend schools characterized by extreme levels of segregation, mostly because almost all the students are Black and Latino.[5] Examples can be seen in the following table[6] analyzing Essex County charter schools by level of segregation, total enrollment, race and poverty:

Essex County Charter Schools by Level of Segregation, Enrollment, Race, and Poverty, 2016-2017:

	Total Students	%Asian	%Hispanic	%Black	%White	%Poverty

[5] Paul Tractenberg and Ryan Coughlan, *The New Promise of School Integration and the Old Problem of Extreme Segregation: An Action Plan for New Jersey to Address Both* 4, 39-40 (Center on Diversity and Equality in Education 2018), https://drive.google.com/file/d/0B3wV7a_ghtLReDF0ajcxX1Ytd0tjSlo3ZXJVazZaNWpZVEFz/view.

[6] *See id.* at Appendix E.

Burch Charter School of Excellence	345	0.3%	1.4%	98.3%	0.0%	95.4%
Discovery CS	100	2.0%	5.0%	91.0%	1.0%	91.0%
Gray CS	347	3.5%	49.0%	40.6%	6.1%	65.4%
Great Oaks Legacy Charter School	1332	0.2%	10.7%	88.1%	0.4%	87.7%
Lady Liberty Academy CS	445	0.0%	6.7%	92.8%	0.0%	32.4%
Link Community Charter School	285	0.4%	4.6%	94.4%	0.0%	74.7%
Maria L. Varisco-Rogers CS	543	3.3%	87.3%	8.7%	0.6%	70.5%
Marion P. Thomas CS	1338	0.0%	5.8%	94.0%	0.1%	89.6%
Merit Prep CS of Newark	494	0.0%	5.9%	93.7%	0.0%	34.8%
New Horizons Comm. CS	481	0.0%	10.8%	89.0%	0.2%	97.7%
Newark Educators Community Charter School	296	0.3%	17.9%	79.1%	1.7%	84.1%
Newark Prep Charter School	429	0.2%	19.8%	76.9%	0.2%	100.0%
North Star Academy Charter School	4490	1.3%	10.2%	86.3%	1.7%	86.9%
Paulo Freire Charter School	267	0.0%	13.1%	86.5%	0.0%	54.3%
Peoples Preparatory Charter School	382	0.0%	12.0%	87.2%	0.3%	98.4%
Phillip's Academy Charter School	376	0.5%	9.3%	85.1%	1.6%	43.1%
Pride Academy Charter School	288	0.0%	3.5%	96.5%	0.0%	83.0%
Robert Treat Academy CS	684	1.0%	60.4%	34.4%	3.8%	74.3%
Roseville Community CS	316	2.2%	53.8%	43.0%	0.6%	97.8%

TEAM Academy Charter School	3694	0.2%	8.2%	90.2%	0.9%	88.1%
University Heights CS	696	0.1%	12.1%	87.4%	0.0%	79.3%
Total	18114	0.71%	18.74%	79.00%	0.87%	76.94%

32. Segregation in New Jersey's charter schools also results from the failure of the State Commissioner of Education to perform his statutory and regulatory duties regarding the operation of charter schools. The Charter School Program Act mandates that, "[t]he admission policy of the charter school shall, to the maximum extent practicable, seek the enrollment of a cross section of the community's school age population including racial and academic factors." N.J.S.A. 18A:36A-8(e). Nonetheless, the Commissioner has permitted most charter schools to locate themselves in individual intensely segregated urban districts notwithstanding the authority in the statute and regulations for multi-district charter schools, which can and should be implemented to advance student diversity, rather than accept student segregation. *See* N.J.S.A. 18A:36A-8, N.J.A.C. 6A:22-2.2.

33. The Act's implementing regulations likewise direct the Commissioner to prevent segregation through the establishment, operation and renewal of charter schools. First, "[p]rior to the granting of the charter, the Commissioner shall assess the student composition of a charter school and the segregative effect that the loss of the students may have on its district of residence." N.J.A.C. 6A:11-2.1(j). Thereafter, "[o]n an annual basis, the Commissioner shall assess the student composition of a charter school and the segregative effect that the loss of the students may have on its district of residence." N.J.A.C. 6A:11-2.2(c). And in reviewing applications for charter renewal, "[t]he Commissioner shall grant or deny the renewal of a charter upon the comprehensive review of the school including . . . the annual assessments of

student composition of the charter school." N.J.A.C. 6A:11-2.3(b)(8).

34. These statutory and regulatory provisions create a broad duty in the Commissioner to ensure that at no point will the operation of a charter school increase segregation in public schooling: "there is no question, and no party argues otherwise, that the Commissioner must ensure that the operation of a charter school does not result in district segregation. The Commissioner must vigilantly seek to protect a district's racial/ethnic balance during the charter school's initial application, continued operation, and charter renewal application." *In re Red Bank Charter Sch.*, 367 N.J. Super. 462, 472 (App. Div. 2004) (internal citations omitted); *accord In re Grant of Charter Sch. Application of Englewood on the Palisades Charter Sch.*, 164 N.J. 316, 328 (2000) ("The Commissioner must consider the impact that the movement of pupils to a charter school would have on the district of residence. That impact must be assessed when the Commissioner initially reviews a charter school for approval to open, and on an annual basis thereafter. . . Continuing assessment of the charter school's pupil population and impact on the district of residence must also occur. . . . The Commissioner's obligation to oversee the promotion of racial balance in our public schools to ensure that public school pupils are not subjected to segregation includes any type of school within the rubric of the public school designation.").

c. *Knowledge of State Officials*

35. State officials have been on notice of New Jersey's extreme school segregation for nearly half a century.[7] Indeed, the New Jersey Department of Education for decades has

[7] In an opinion published on May 13, 1971, almost exactly 47 years ago, a federal district court stated, in connection with a law suit filed against the state's Attorney General, and Commissioner and State Board of Education, that

published data documenting the existence of intense segregation in New Jersey. *See* State of New Jersey, Dep't of Educ., Enrollment Data, *available at* Sahttp://www.state.nj.us/education/data/enr/. The State also has collected data and issued performance reports for each school, including such information as race and ethnicity, dating back to at least 2001. *See* State of New Jersey, School Performance Reports, *available at* https://rc.doe.state.nj.us/PerformanceReports.aspx. Further, the specific problem at issue has long been the subject of scholarly treatment[8] and has been widely reported in the press.[9]

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there was in New Jersey both a "continuing trend toward racial imbalance caused by housing patterns" and that the state's system of public education "has degenerated to extreme racial imbalance in some school districts." *Spencer v. Kugler*, 326 F. Supp. 1235, 1243 (D.NJ 1971), *aff'd*, 404 U.S. 1027 (1972). This decision was issued only slightly more than a month before the New Jersey Supreme Court announced its decision in *Jenkins v. Township of Morris School District*, 58 N.J. 483 (1971), where the Court not only underscored that the state Constitution was violated by *de facto* segregation, but also reassured the Commissioner that he had the power to consolidate school districts to achieve racial balance.

[8] *See, e.g.*, Paul Tractenberg and Ryan Coughlan, *The New Promise of School Integration and the Old Problem of Extreme Segregation: An Action Plan for New Jersey to Address Both* 18-26 (Center on Diversity and Equality in Education 2018); Gary Orfield, *et al.*, *New Jersey's Segregated Schools: Trends and Paths Forward*, (UCLA Civil Rights Project 2017), https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/new-jerseys-segregated-schools-trends-and-paths-forward/New-Jersey-report-final-110917.pdf; Greg Flaxman, *et al.*, *A Status Quo of Segregation: Racial and Economic Imbalance in New Jersey Schools, 1989-2010* (UCLA Civil Rights Project 2013), https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/a-status-quo-of-segregation-racial-and-economic-imbalance-in-new-jersey-schools-1989-2010/Norflet_NJ_Final_101013_POSTb.pdf.; Paul Tractenberg, *et al.*, *New Jersey's Apartheid and Intensely Segregated Urban Schools* (Institute on Education Law and Policy at Rutgers University-Newark 2013), http://ielp.rutgers.edu/docs/IELP%20final%20report%20on%20apartheid%20schools%20101013.pdf.; Barry A. Gold, *Still separate and unequal: segregation and the future of urban school reform* (Teachers College Press 2007); Gary Orfield & Chungmei Lee, *Brown At 50: King's Dream or Plessy's Nightmare?* (Harvard Civil Rights Project 2004), https://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/brown-at-50-king2019s-dream-or-plessy2019s-nightmare/orfield-brown-50-2004.pdf; Gary Orfield, *Public School Desegregation in the United States, 1968-1980* (Joint Center for Political Studies 1983), https://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/public-school-desegregation-in-the-united-states-1968-1980/orfield_american-desegregation-1983.pdf.

[9] *See, e.g.,* Aneri Pattani, *New Jersey Schools Becoming More Segregated, New Report Finds*, WNYC, Nov 16, 2017, https://www.wnyc.org/story/new-jersey-schools-becoming-more-segregated-new-report-finds/; Chris Rasmussen, *Creating Segregation in the Era of Integration: School Consolidation and Local Control in New Brunswick, New Jersey, 1965–1976*, History of Education Quarterly, Nov. 2017, *available at* https://doi.org/10.1017/heq.2017.29; Editorial, *Why 'apartheid schools' have become common in Philly and NJ*, Philadelphia Inquirer, Nov. 21, 2017, http://www.philly.com/philly/opinion/why-apartheid-schools-have-become-common-in-philly-and-nj-editorial-20171120.html; Stephen Weiss, *New Jersey has third highest number of severely*

V. THE CAUSES OF SEGREGATION IN NEW JERSEY

36. Segregation in New Jersey's public schools is the foreseeable consequence of

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Post, May 15, 2014, https://www.washingtonpost.com/blogs/govbeat/wp/2014/05/15/the-most-segregated-schools-may-not-be-in-the-states-youd-expect-2/?utm_term=.8dce76537067; Walter Fields, *Six decades after 'Brown,' N.J.'s schools are still segregated*, The Star-Ledger, April 18, 2014, p. 11; Caryn Shinske, *On diversity, N.J. schools still failing - PolitiFact New Jersey*, The Star-Ledger, July 17, 2011, p. 15; Bob Braun, *Bringing N.J. schools' racial segregation into open*, The Star-Ledger, May 19, 2011, http://blog.nj.com/njv_bob_braun/2011/05/braun_bringing_nj_schools_raci.html; Editorial, *Don't retreat on integration*, The Star-Ledger, Dec. 4, 2006, p. 14; Robert Schwaneberg, *A work in progress, 50 years after Brown vs. Board of Ed - New Jersey is among states still confronting segregation in schools*, The Star-Ledger, April 18, 2004; John Mooney, *50 years after Brown decision, Jersey schools have far to go*, The Star-Ledger, Dec. 12, 2003, p. 25; Karen DeMasters, Segregation Seen Increasing, N.Y. 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three mutually compounding factors: residential segregation, the design of school districts to be almost entirely contiguous with the boundaries of residentially segregated municipalities and State law assigning students to public schools by residency, N.J.S.A. 18A:38-1.

37. Residential segregation in New Jersey reflects the confluence of decades of exclusionary zoning by suburban municipalities throughout New Jersey and the high correlation between race and socioeconomic status. Housing that is available to and affordable for lower-income families has been concentrated in certain primarily urban municipalities. And because Black and Latino families are overrepresented within the lower socioeconomic strata in the State—and Whites are overrepresented within the higher socioeconomic strata—the result is a high degree of racial segregation in New Jersey, primarily but not entirely as between poorer cities, on the one hand, and more affluent suburbs on the other.[10]

38. Residential segregation translates to public school segregation through the design of school districts that are mainly contiguous with the boundaries of residentially segregated municipalities and enforcement of an attendance statute, N.J.S.A. 18A:38-1, which, with minor exceptions, mandates that students attend public school in the municipality in which they reside.

39. The segregative impact of these intersecting State laws, policies, and practices is evident from analysis of the racial and socioeconomic demographics of eight of New Jersey's twenty-one counties—Essex, Hudson, Union, Passaic, Middlesex, Camden, Mercer and

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[10] *See S. Burlington Cty. N.A.A.C.P. v. Mount Laurel Twp.* (*Mount Laurel II*), 92 N.J. 158, 209-10 (1983) (addressing unregulated exclusionary policies that zoned low-income people "out of substantial areas of the state"); *S. Burlington Cty. N.A.A.C.P. v. Mount Laurel Twp.* (*Mount Laurel I*), 67 N.J. 151, 184 (1975) (concentration of lower socioeconomic groups in urban, low-income housing the result of "population decentralization, outer suburban development and exclusionary zoning"); *see also* Douglas S. Massey, *et al.*, *Climbing Mount Laurel: The Struggle for Affordable Housing and Social Mobility in an American Suburb* 66 (2013) (describing the low poverty rates, higher median incomes and higher home ownership rates in White municipalities around Mount Laurel).

Monmouth—all or substantially all of which contain districts in which the public schools are intensely segregated (over 90% non-White) by race, and which overwhelmingly enroll students living in poverty.

40. Thus:

A. In Essex County, the student populations of at least four school districts—East Orange, Irvington, Newark and Orange—are at least 90% non-White with at least 62% in poverty. The table below sets forth the racial breakdown of students in those four districts, as well as the percentage of students from families with incomes below the poverty level.

District	Total students	%Asian	%Hispanic	%Black	%White	%Poverty[11]
East Orange	8996	0.1%	7.3%	92.0%	0.4%	62.9%
Irvington Township	6785	0.5%	17.7%	80.7%	0.3%	85.7%
Newark City	35836	0.8%	46.4%	44.3%	7.9%	79.4%
Orange City	5167	0.3%	35.0%	64.0%	0.3%	65.9%

B. In Hudson County, the student populations of at least four school districts—Guttenberg, North Bergen, Union City and West New York—are at least 93% non-White with at least 81% in poverty. The table below sets forth the racial breakdown of students in those four districts, as well as the percentage of students from families with incomes below the poverty level.

District	Total students	%Asian	%Hispanic	%Black	%White	%Poverty
Guttenberg Town	1016	1.7%	90.9%	1.3%	6.0%	81.5%
North Bergen	7713	2.7%	86.3%	1.0%	9.6%	66.5%
Union City	12216	1.4%	96.0%	0.8%	1.8%	88.0%
West New York Town	7988	1.2%	91.4%	1.1%	6.2%	82.8%

C. In Union County, the student populations of at least four school districts—

[11] Poverty, for purposes of this calculation, is defined by the percentage of students who qualify for a free or reduced-price lunch.

Elizabeth, Hillside, Plainfield and Roselle—are at least 89% non-White with at least 65% in poverty. The table below sets forth the racial breakdown of students in those four districts, as well as the percentage of students from families with incomes below the poverty level.

District	Total students	%Asian	%Hispanic	%Black	%White	%Poverty
Elizabeth	26491	1.7%	71.5%	18.7%	7.9%	83.5%
Hillside	3085	1.8%	22.7%	64.3%	10.3%	65.8%
Plainfield	7822	0.3%	67.3%	31.3%	0.5%	81.5%
Roselle	2802	1.2%	39.1%	56.6%	2.7%	69.5%

D. In Passaic County, the student populations of at least three districts—Passaic, Paterson and Prospect Park—are at least 90% non-White with at least 62% living in poverty. The table below sets forth the racial breakdown of students in those three districts, as well as the percentage of students from families with incomes below the poverty level.

District	Total students	%Asian	%Hispanic	%Black	%White	%Poverty
Passaic	14276	1.8%	92.5%	4.6%	0.9%	99.8%
Paterson	25509	4.9%	68.2%	22.1%	4.7%	75.0%
Prospect Park Boro	923	2.5%	71.2%	15.7%	9.3%	62.6%

E. In Middlesex County, the student populations of at least two large districts—New Brunswick and Perth Amboy—are at least 98% non-White with at least 59% in poverty. The table below sets forth the racial breakdown of students in those two districts, as well as the percentage of students from families with incomes below the poverty level.

District	Total students	%Asian	%Hispanic	%Black	%White	%Poverty
New Brunswick	9100	0.4%	88.8%	9.7%	0.8%	59.6%
Perth Amboy	10650	0.6%	91.8%	5.7%	1.6%	86.9%

F. In Camden County, the student populations of at least three districts—Camden City, Lawnside Boro and Woodlynne Boro—are at least 93% non-white with at least 64% in poverty. The table below sets forth the racial breakdown of students in those three districts, as well as the percentage of students from families with incomes below the poverty

level.

District	Total students	%Asian	%Hispanic	%Black	%White	%Poverty
Camden City	8943	1.0%	51.0%	46.3%	1.3%	64.9%
Lawnside Boro	326	1.5%	11.7%	81.3%	2.8%	66.3%
Woodlynne Boro	384	9.1%	52.9%	28.4%	6.5%	89.8%

G. In Mercer County, the student population of the largest City in the County, Trenton, is at least 98% non-White with at least 89% in poverty. The table below sets forth the racial breakdown of students in that district, as well as the percentage of students from families with incomes below the poverty level.

District	Total students	%Asian	%Hispanic	%Black	%White	%Poverty
Trenton	10962	0.5%	48.7%	49.0%	1.2%	89.1%

H. In Monmouth County, the student populations of at least two districts—Asbury Park and Red Bank are 92% non-White with at least 82% in poverty. The table below sets forth the racial breakdown of students in those two districts, as well as the percentage of students from families with incomes below the poverty level.

District	Total students	%Asian	%Hispanic	%Black	%White	%Poverty
Asbury Park	2027	0.2%	40.8%	56.7%	2.0%	82.8%
Red Bank Boro	1289	0.4%	82.3%	8.2%	7.5%	88.8%

41. The fact of residential segregation, combined with district boundaries that track such segregation, and the attendance requirements of N.J.S.A. 18A:38-1 yield segregation on the basis of race and socioeconomic class in the public school system that have long been common knowledge in New Jersey.[12]

[12] *See, e.g.*, Douglas S. Massey, *et al.*, *Climbing Mount Laurel: The Struggle for Affordable Housing and Social Mobility in an American Suburb* 17 (2013) (on average, African and American and Latino residents of New Jersey live in areas in which the concentration of their own racial group is more than twice the state-wide percentage; specifically, while African Americans and Latinos each comprise less than 20% of the population state-wide,

VI. THE EFFECTS OF SEGREGATION

42. As discussed above, 64 years ago today *Brown v. Board of Ed. of Topeka*, 347 U.S. 483, 493, 495 (1954), declared state-mandated public school segregation unconstitutional because "[s]eparate educational facilities are inherently unequal." In New Jersey, *de facto* racial segregation has repeatedly been held by the New Jersey Supreme Court to violate the New Jersey Constitution, at least in part because it deprives all students of the benefits of a diverse learning environment both from an educational perspective and to the detriment of our democracy:

> Whether or not the federal constitution compels action to eliminate or reduce *de facto* segregation in the public schools, it does not preclude such action by state school authorities . . . . In a society such as ours, it is not enough that the 3 R's are being taught properly for there are other vital considerations. The children must learn to respect and live with one another in multiracial and multi-cultural communities and the earlier they do so the better. It is during their formative school years that firm foundations may be laid for good citizenship and broad participation in the mainstream of affairs. Recognizing this, leading educators stress the democratic and educational advantages of heterogeneous student populations and point to the disadvantages of homogeneous student populations . . . . [T]he states may not justly deprive the oncoming generation of the educational advantages which are its due, and indeed, as a nation, we cannot afford standing by.
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> [*Booker v. Bd. of Ed. of City of Plaintfield, Union Cty.*, 45 N.J. 161, 170-71 (1965); *accord In re North Haledon Sch. Dist.*, 181 N.J. 161, 177 (2004) ("We consistently have held that racial imbalance resulting from *de facto* segregation is inimical to the constitutional guarantee of a thorough and efficient education.")]

43. Extensive social science research over many decades demonstrates that Black, Latino, and White schoolchildren who attend diverse and inclusive schools enjoy numerous, significant educational benefits. Specifically, powerful social science research published since

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members of both groups live in areas in which, on average, their own racial group makes up more than 40% of the community population).

the late 1980's demonstrates that low-income Black and Latino students who attend racially and socioeconomically diverse schools are more likely to achieve higher test scores and grades, graduate from high school, and attend and graduate from college, as compared to their otherwise comparable peers who attend schools with high percentages of low income and/or disadvantaged Black and Latino youth.[13]

44. For example, recently published studies concerning the effects of the inter-district magnet school program implemented in response to the Connecticut Supreme Court's decision in *Sheff v. O'Neill*, 678 A.2d. 1267 (1996), holding unconstitutional the deeply segregated schools in Hartford, Connecticut, confirm the beneficial effects of diverse schools on the educational achievement of low-income Black and Latino students:

> [A]ttendance at an interdistrict magnet high school has positive effects on the mathematics and reading achievement of central city students and [ ] interdistrict magnet middle schools have positive effects on reading achievement. That interdistrict magnet schools, on average, succeed in providing their students more integrated, higher achieving peer environments and that they also, on average, have positive effects on achievement suggests that they represent a promising model for helping to address the ills of racial and economic isolation.
> [Robert Bifulco, *et al.*, *Can Interdistrict Choice Boost Student Achievement? The Case of Connecticut's Interdistrict Magnet School Program*, *in* Educational Evaluation and Policy Analysis, Vol. 31. No. 4 (Dec. 2009) 341; Casey D. Cobb, *et al.*, *Evaluation of Connecticut's Interdistrict Magnet Schools* ES-4 (University of Connecticut 2009).]

45. Likewise, White students who attend schools with a disproportionately high enrollment of White students compared to the statewide student enrollment, are deprived of the opportunity to learn, participate in athletic and extracurricular activities, and interact with

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[13] Roslyn Arlin Mickelson, *School Integration and K-12 Educational Outcomes: A Quick Synthesis of Social Science Evidence*, The National Coalition on School Diversity, Research Brief No. 5 (Oct. 2016), http://school-diversity.org/pdf/DiversityResearchBriefNo5.pdf.

children from racial and socioeconomic backgrounds different from their own. These students, therefore, are deprived of an educational experience that prepares them to function as adults in a racially and socioeconomically diverse society. By contrast, students who attend racially and socioeconomically diverse schools derive substantial benefit from exposure to children of different backgrounds.[14] Indeed, that research further establishes that attending a diverse school promotes achievement across subject matters, including in mathematics, science, language and reading, across all grades, most significantly in middle school and high school, and that students from all racial and socio-economic backgrounds benefit from diverse schools.

46. In sum, racial and socioeconomic segregation denies hundreds of thousands of public school students the well-known benefits of a diverse education. Indeed, those benefits are enshrined in New Jersey law. *See In re North Haledon Sch. Dist.*, 181 N.J. at 177 ("Students attending racially imbalanced schools are denied the benefits that come from learning and associating with students from different backgrounds, races, and cultures.") (citing *Jenkins v. Township of Morris Sch. Dist.*, 58 N.J. 483, 499 (1971); *Booker*, 45 N.J. at 170-71)).

VII. THE FEASIBLE SOLUTIONS, WHICH NEW JERSEY HAS IGNORED

47. Almost 50 years ago, New Jersey's Commissioner of Education, armed with a New Jersey Supreme Court decision, implemented a highly successful integration remedy—the

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[14] *See, e.g.*, Sylvia Hurtado, *The Next Generation of Diversity and Intergroup Relations Research*, 61 J. Soc. Issues 595, 600-06 (2005) (study showing that diversity in education promotes improvements in analytical problem-solving and complex thinking, cultural awareness and leadership, and understanding of value of civic contribution); Charles E. Daye, *et al., Does Race Matter in Educational Diversity? A Legal and Empirical Analysis*, 13 Rutgers Race & L. Rev. 75-S, 76-S (2012) ("[E]xtensive quantitative and qualitative empirical data support the finding that a racially diverse law student body provides educational benefits for students, for their institution, and for society, especially if there is significant interaction among students from diverse backgrounds."); Roslyn Arlin Mickelson, Roslyn Arlin Mickelson, *School Integration and K-12 Educational Outcomes: A Quick Synthesis of Social Science Evidence*, The National Coalition on School Diversity, Research Brief No. 5 (Oct. 2016), http://school-diversity.org/pdf/DiversityResearchBriefNo5.pdf.

consolidation of the Morristown and Morris Township school districts for racial balance purposes.[15] Despite its success, that solution has not been fully employed in the intervening years. New Jersey also has a number of statutory and regulatory provisions that can be adapted to promote school integration. These include: voluntary consolidation by individual districts, N.J.S.A. 18A:13-34; district consolidation within counties by order of the Commissioner of Education, on the recommendation of executive county superintendents, N.J.S.A. 18A:7-8; expanded school district authority to accept non-resident students, N.J.S.A. 18A:38-3 (a); authority of districts to send students to or receive students from other districts pursuant to agreements between the districts, N.J.S.A. 18A:38-8 *et seq*.; Interdistrict Public School Choice program, N.J.S.A. 18A:36B-14 et *seq*; county vocational district schools, N.J.S.A. 18A:54 *et seq.*; and, as noted above, multi-district charter schools, N.J.S.A. 18A:36A-8, N.J.A.C. 6A:22-2.2.

48. The experiences of States, counties and school districts throughout the country also attest to the fact that integrative policies and practices could be feasibly implemented in New Jersey in ways that significantly reduce public school segregation. These experiences demonstrate that increased diversity within public schools and remediation of the stark segregation by race and poverty that currently exists in the State are both feasible and achievable.[16]

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[15] *See* Paul Tractenberg, *et al*., *Remedying School Segregation: How New Jersey's Morris School District Chose to Make Diversity Work* (The Century Foundation 2016), https://s3-us-west-2.amazonaws.com/production.tcf.org/app/uploads/2016/12/12191925/Remedying-School-Segregation.pdf.

[16] *See Jenkins*, 58 N.J. at 507 (stating that "schools with *feasibly* correctable racial imbalances might well currently be viewed as not affording suitable educational facilities") (emphasis added).

49. Analysis of the experiences of other communities throughout the nation shows that, in addition to the New Jersey-specific remedies described in paragraph 46 above, three primary remediation methodologies are feasible in New Jersey and likely to result in a more racially and socioeconomically diverse public school system:

A. Interdistrict desegregation transfer plans;

B. Interdistrict enrollment in themed Magnet Schools; and

C. Regional Controlled Choice.

50. The first two methodologies contemplate voluntary participation by students and their families in processes likely to result in more diverse schools. The third—Regional Controlled Choice—seeks to achieve racial diversity by combining a family's ranked preferences for a prescribed set of schools with the power of a coordinating educational entity to weigh the individual ranking of school choices against the collective goal of achieving diversity in every school. Because children usually, but not always, are assigned to their preferred choice of schools, the Regional Controlled Choice methodology is best characterized as combining features that are both voluntary and involuntary.

51. Interdistrict desegregation transfer plans authorize Black and Latino students to elect to attend schools outside their district of residence. Such plans have been implemented, in, for example, East Palo Alto, Minneapolis, Omaha, Milwaukee, St. Louis, Hartford, Rochester and Boston. Participation by suburban school districts may be voluntary, mandated, or enhanced by financial incentives. Participation by urban students and their families is voluntary. Selection of students is often by lottery, with most programs characterized by substantial waiting lists. The

research on academic outcomes of these programs consistently and strongly demonstrates that they have a significant positive impact on achievement levels and graduation rates.[17]

52. The use of an interdistrict desegregation transfer plan could relocate thousands of students within each New Jersey municipality in which it is used, altering the demographics and ameliorating the segregation in both sending and receiving schools. For example, during the 2016-17 school year, 2157 students constituting ten percent of the students otherwise eligible to attend Hartford public schools were enrolled in Hartford's interdistrict choice program.[18]

53. Interdistrict enrollment in themed Magnet Schools is a voluntary remediation program that has been successfully implemented in a number of school districts throughout the country including Hartford, New Haven, Bridgeport, New London and Danbury, Conn.; Wake County, North Carolina; Tampa and Broward County, Florida; Waco, Texas; and Richmond, Virginia. In Connecticut, for example, Magnet Schools were established in response to the *Sheff* litigation in which the Connecticut Supreme Court held that the operation of racially segregated public schools in the City of Hartford violated that State's Constitution and invalidated the statute mandating that students attend school in the municipalities in which they reside. The *Sheff* magnet school program attracts not only students from Hartford inner-city schools but also White students who elect to be bused to the schools from their suburban communities outside of

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[17] *See generally* Amy S. Wells, *et al, Boundary Crossing for Diversity, Equity and Achievement: Inter-District School Segregation and Educational Opportunity* (Harvard Law School 2009).

[18] Interdistrict choice programs in St. Louis, Indianapolis and Milwaukee have experienced peak annual enrollments of 13000, 7000 and 6000 students, respectively. *See* Amy S. Wells, *et al.*, *The Story of Meaningful School Choice: Lessons From Interdistrict Transfer Plans*, *in* Gary Orfield & Erica Frankenburg, *Educational Delusions?:Why Choice Can Deepen Inequality and How to Make Schools Fair* 209 (2013).

Hartford. Magnet Schools—elementary schools, middle schools and high schools—often focus on specialized areas of learning.

54. As a result of the *Sheff* litigation, 39 Magnet Schools were utilized in Hartford and surrounding communities, and in the 2016-17 school year, approximately 7314 students, constituting 34% of those eligible to attend Hartford public schools, were enrolled in Magnet Schools. In addition, during the same school year, 10,929 students who reside in communities in the vicinity of Hartford attended those same Magnet Schools.

55. Regional Controlled Choice is a school assignment methodology that strives to assign all participating students to schools that are racially and socioeconomically diverse. It operates by expanding the boundaries that determine school attendance, from districts to larger regions that incorporate more racially and socioeconomically diverse populations, and then balancing individual preferences against the collective goal of heterogeneous student populations in all schools. Louisville, Kentucky and Berkeley, California are examples of communities in which Regional Controlled Choice programs have been successfully implemented to achieve significantly greater public school diversity.

56. The implementation of an Interdistrict Desegregation Transfer Plan, together with Interdistrict Enrollment in themed Magnet Schools, and a Regional Controlled Choice Plan, constitutes a comprehensive remediation strategy that would achieve substantial racial and socioeconomic diversification of New Jersey's public schools.

57. These options, which together and separately are feasible, have been and are familiar to educators around the country, including educators in New Jersey.

VIII. NEW JERSEY IS FULLY AWARE OF THE EXTENT, CAUSES, EFFECTS, AND PROSPECTIVE SOLUTIONS TO SEGREGATION IN ITS PUBLIC SCHOOLS

58. As set forth in paragraph 35 above, which is incorporated by reference as if fully set forth herein, the Defendants have long been—and continue to be—well aware of the segregated state of New Jersey's schools. The State of New Jersey oversees operation of its public schools and is fully aware of the racial composition of its schools. Indeed, it has long collected student enrollment data, including data that is analyzed by race. And this data has been published in numerous reports specifically addressed to the issue of racial segregation. Furthermore, a number of lawsuits have raised the issue of segregation in the State's public school system, one decided more than 70 years ago. *See Hedgpeth v. Board. of Edu. of City of Trenton*, 131 N.J.L. 153 (1944) (holding unconstitutional assignment of children to separate Black and White public schools in Trenton). Accordingly, the State is fully aware of the fact and extent of the problem. [19]

59. The State has also long been and is well aware of the causes of segregation in New Jersey's public schools. The State is well aware of the fact of residential segregation on the basis of race and socioeconomic status, not only from census data but also because, as set forth in paragraphs 37-38 above, residential segregation has been the subject of continued, landmark litigation giving rise to the *Mount Laurel* doctrine. The State is also, of course, aware of its own attendance statute, and of the way that these factors interact in mutually aggravating fashion to create deep and worsening segregation in the public school system.

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[19] *See also Pierce v. Union District School Trustees*, 46 N.J.L. 76 (1884) (holding unlawful on statutory grounds public school's denial of student on basis of race).

60. As set forth in paragraphs 43-46 above, which are incorporated by reference as if fully set forth herein, the Defendants have long been and are well aware of the effects of the segregated state of New Jersey's schools. The benefits of diversity in education and the corresponding detriments of learning in a homogenous environment are well known and have been recognized by the Courts including the Supreme Court of New Jersey. Constructive and actual knowledge of the effects of segregation in this State are, then, appropriately attributed to the State.

61. As set forth in paragraphs 47-57 above, which are incorporated by reference as if fully set forth herein, the Defendants have long been and are well aware of the feasibility of solutions to the problem of segregation in the public school system, including those discussed herein, which have been implemented successfully in in at least one New Jersey school district and in numerous cities and counties nationwide; they have also been the subject of numerous studies and coverage in the press. The feasibility of these solutions to the segregation problem is thus well known.

IX. NEW JERSEY DOES NOT TOLERATE SEGREGATION AND THE COMMISSIONER HAS A DUTY TO REMEDY IT

62. New Jersey's Constitution, statutes, and case law are among the strongest in the nation in their prohibition of segregation in the State's public schools.

A. Article 1, ¶ 5, of the New Jersey Constitution prohibits the segregation of any person "in the public schools, because of religious principles, race, color, ancestry or national origin."

B. A statute initially adopted in 1881, currently codified at N.J.S.A. 18A:38-5.1, prohibits exclusion of any child from public school on account of his or her "race, creed, color, national origin, or ancestry."

> C. In a series of decisions, the New Jersey Supreme Court has held that even *de facto* segregation of public school students violates the Thorough and Efficient Clause of the New Jersey Constitution (N.J. Const., art. VIII, §4, ¶1). *See Booker v. Bd. of Educ. of Plainfield*, 45 N.J. 161, 170 (1965) ("It is neither just nor sensible to proscribe segregation having its basis in affirmative state action while at the same time failing to provide a remedy for segregation which grows out of discrimination in housing, or other economic or social factors."); *Jenkins v. The Township of Morris School District*, 58 N.J. 483, 506 (1971) ("In *Booker* we held that the Commissioner had the responsibility and power of correcting De facto segregation or imbalance which is frustrating our State constitutional goals . . . ."); *In re Grant of Charter School Application of Englewood on the Palisades Charter School*, 164 N.J. 316, 324 (2000) ("New Jersey's abhorrence of discrimination and segregation in the public schools is not tempered by the cause of the segregation. Whether due to an official action, or simply segregation in fact, our public policy applies with equal force against the continuation of segregation in our schools."); *In re North Haledon School District*, 181 N.J. 161, 177 (2004) ("We consistently have held that racial imbalance resulting from *de facto* segregation is inimical to the constitutional guarantee of a thorough and efficient education.").

63. The Commissioner of Education has the comprehensive legal authority, and indeed is legally required, to cure any constitutional violations by any means necessary, including by promptly developing and implementing a comprehensive Statewide plan to desegregate and diversify New Jersey's public schools. *In re Grant of Charter Sch. Application of Englewood on the Palisades Charter Sch.*, 164 N.J. 316, 328 (2000) ("The Commissioner's obligation to oversee the promotion of racial balance in our public schools to ensure that public school pupils are not subjected to segregation includes any type of school within the rubric of the public school designation."); *Jenkins v. Township of Morris Sch. Dist.*, 58 N.J. 483, 506 (1971) (holding that N.J. Const. Art. I, ¶ 5, which forbids racial segregation in the State's public schools, imposes on the Commissioner the "obligation to take affirmative steps to eliminate

racial imbalance, regardless of its causes" and to order district consolidation if necessary (internal quotation marks omitted)).

64. Yet, notwithstanding New Jersey's constitutional prohibition of *de facto* segregation and the Commissioner's obligation and authority to redress the problem, the State of New Jersey knowingly and willfully has condoned and permitted the existence of highly segregated public schools in numerous school districts throughout the State. Such districts include those operated and controlled by the State pursuant to its authority under N.J.S.A. 18A:7A-34, in which, as set forth in paragraph 25 above, there has been intense and enduring segregation of Black and Latino students, and the State has failed to take any remedial action that would address or correct that segregation.

X. CAUSES OF ACTION

FIRST COUNT

Violation of New Jersey Constitution, Article I, ¶ 5

65. Paragraphs 1 through 64 are incorporated by reference as if fully set forth herein.

66. New Jersey's public schools are unconstitutionally segregated on the basis of race and ethnicity in violation of New Jersey Constitution, Article I, ¶ 5, which mandates that "[n]o person shall be . . . segregated . . . in the public schools, because of . . . race, color, ancestry, or national origin."

SECOND COUNT

Violation of New Jersey Constitutional Guarantee of Equal Protection

67. Paragraphs 1 through 64 are incorporated herein by reference as if fully set forth herein.

68. Segregation on the basis of race, ethnicity and poverty in New Jersey's public schools violates New Jersey's constitutional guarantee of equal protection of the laws, found in New Jersey Constitution, Art. I, ¶ 1.

THIRD COUNT

Violation of New Jersey Constitution, Art. VIII, ¶4

69. Paragraphs 1 through 64 are incorporated herein by reference as if fully set forth herein.

70. The segregation of New Jersey's public schools on the basis of race, ethnicity and poverty unconstitutionally deprives the State's public school students of the thorough and efficient education to which they are entitled under New Jersey Constitution, Art. VIII, ¶4.

FOURTH COUNT

**Violation of New Jersey Constitution, Article I, ¶ 5;
Article I, ¶ 1; and Article VIII, ¶ 4**

71. Paragraphs 1 through 64 are incorporated herein by reference as if fully set forth herein.

72. Article I, ¶ 5, Article I, ¶ I and Article VIII, ¶ 4, provisions of the New Jersey constitution that prohibit segregation by race in New Jersey public schools, guarantee New Jersey residents the equal protection of the laws and guarantee New Jersey students a thorough and efficient education, should be construed together and collectively interpreted in light of each other to constitute a clear and unequivocal condemnation of racial and socioeconomic segregation in New Jersey public schools.

FIFTH COUNT

Violation of N.J.S.A. 18A:38-5.1

73. Paragraphs 1 through 64 are incorporated herein by reference as if fully set forth herein.

74. New Jersey's segregation of public school students by race is in violation of N.J.S.A. 18A:38-5.1, which requires that the New Jersey Commissioner of Education ensure that "[n]o child between the ages of four and 20 years shall be excluded from any public school on account of his race, creed, color, national origin, or ancestry."

SIXTH COUNT

Violation of Charter School Program Act, N.J.S.A. 18A:36A-7

75. Paragraphs 1 through 64 are incorporated herein by reference as if fully set forth herein.

76. Segregation by race and poverty in New Jersey's charter schools violates N.J.S.A. 18A:36A-7, which mandates that "[a] charter school shall be open to all students on a space available basis and shall not discriminate in its admission policies or practices on . . . any [] basis that would be illegal if used by a school district . . . ."

77. Segregation by race and poverty in New Jersey's charter schools also violates the regulations adopted to implement the Charter School Program Act, set forth in N.J.A.C. 6A:11-2.1 – 2.3, which provide, inter alia, that charter schools may not have a segregative effect.

SEVENTH COUNT

Violation of New Jersey Civil Rights Act, N.J.S.A. 10:6-2

78. Paragraphs 1 through 76 are incorporated herein by reference as if fully set forth herein.

79. The violations of the New Jersey Constitution also violate N.J.S.A. 10:6-2, et seq.

XI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment as follows:

A. Declaring New Jersey's longstanding and intensive segregation of Black and Latino public school students to be unlawful and violative of the New Jersey Constitution, Art. I, ¶¶ 1 and 5, and Art. VIII, ¶4, and of N.J.S.A. 18A:38-5.1 and 18A:36A-7;

B. Declaring that N.J.S.A. 18A:38-1 is unlawful and violative of the New Jersey Constitution insofar as it compels New Jersey school children to attend public schools in the municipality in which they reside and insofar as such residency requirement furthers racial segregation in New Jersey's public schools.

C. Declaring that N.J.S.A. 18A:36A-8 and N.J.A.C. 6A:11-2.1(l), which mandate that charter schools prioritize enrollment of students from the district in which they reside, are unlawful, and violate the New Jersey Constitution.

D. Enjoining the continued assignment of public school students, including those attending charter schools, solely on the basis of municipal

attendance boundaries and mandating that the Legislature, the Commissioner of Education and the State Department of Education adopt a replacement assignment methodology that will timely address and remediate racial segregation in New Jersey's public schools, including in charter schools.

E. Ordering that the Commissioner of Education prepare and submit to the Court within three months a detailed remediation plan designed to achieve comprehensive desegregation and diversification of New Jersey's public schools within and among school districts.

F. Awarding attorney's fees and costs pursuant to N.J.S.A. 10:6-2(f).

G. Such other relief as to the Court may appear just and proper.

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Attorneys for Plaintiffs

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By: _____
Lawrence S. Lustberg

Dated: May 17, 2018

XII. DESIGNATION OF TRIAL COUNSEL

Lawrence S. Lustberg, Esq. and Michael S. Stein, Esq. are hereby designated as trial counsel on behalf of Plaintiffs.

XIII. CERTFICATION PURSUANT TO R.4:5-1

The undersigned hereby certify, upon information and belief, that the matter in controversy is not the subject of any other action in any court or arbitration proceeding, there is no other action or arbitration proceeding contemplated, and there are no other parties who should be joined in this action.

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Dated: May 17, 2018