

LATINO ACTION NETWORK; NAACP NEW JERSEY STATE CONFERENCE; LATINO COALITION; URBAN LEAGUE OF ESSEX COUNTY; THE UNITED METHODIST CHURCH OF GREATER NEW JERSEY; [REDACTED], [REDACTED], BY HER GUARDIAN AD LITEM, COURTNEY WICKS; [REDACTED], [REDACTED], BY HIS GUARDIAN AD LITEM, RACHEL RUEL; [REDACTED], [REDACTED], BY HER GUARDIAN AD LITEM, YVETTE ALSTON- JOHNSON; [REDACTED], [REDACTED], BY HIS GUARDIAN AD LITEM, YVETTE ALSTON-JOHNSON; [REDACTED], [REDACTED], BY HIS GUARDIAN AD LITEM, ANDREA HAYES; [REDACTED], [REDACTED], BY HIS GUARDIAN AD LITEM, MARIA LORENZ; and [REDACTED], [REDACTED], BY HIS GUARDIAN AD LITEM, ELIZABETH WEILL-GREENBERG,

Plaintiffs-Appellants,

and

PLEASANTVILLE BOARD OF EDUCATION and WILDWOOD BOARD OF EDUCATION,

Intervenor-Plaintiffs,

(Caption continued inside cover)

BRIEF OF AMICI CURIAE SALVATION AND SOCIAL JUSTICE, LEAGUE OF WOMEN VOTERS OF NEW JERSEY, AND RELIGIOUS ACTION CENTER OF NEW JERSEY OF THE UNION FOR REFORM JUDAISM IN SUPPORT OF PLAINTIFFS-APPELLANTS

SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION

Docket No. A-003471-24

CIVIL ACTION

On Appeal from an Interlocutory Order of the Superior Court of New Jersey, Law Division, Mercer County

Trial Court Docket No. MER-L-001076-18

Sat Below:
Hon. Robert T. Lougy,
A.J.S.C.

Date Submitted: February 10, 2026

v.

THE STATE OF NEW JERSEY; NEW JERSEY
STATE BOARD OF EDUCATION; and LAMONT
REPOLLET, ACTING COMMISSIONER, STATE
DEPARTMENT OF EDUCATION,

Defendants-Appellees,

and

NEW JERSEY CHARTER SCHOOLS
ASSOCIATION, INC.; BELOVED COMMUNITY
CHARTER SCHOOL; ANA MARIA DE LA
ROCHE ARAQUE; TAFSHIER COSBY; DIANE
GUTIERREZ; CAMDEN PREP, INC.; KIPP
COOPER NORCROSS, INC.; and MASTERY
SCHOOLS OF CAMDEN, INC.,

Intervenor-Defendants.

Micauri Vargas, Esq. (337522021)
Ryan Haygood, Esq. (258302018)
Henal Patel, Esq. (070832013)
Harbani Ahuja, Esq. (246842017)
NEW JERSEY INSTITUTE FOR
SOCIAL JUSTICE
60 Park Place, Suite 511
Newark, NJ 07102
(973) 624-9400
mvargas@njisj.org

Counsel for Proposed Amici

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INTEREST OF AMICI CURIAE

Amici curiae Salvation and Social Justice (“SandSJ”), the League of Women Voters of New Jersey (“LWVNJ”), and the Religious Action Center of New Jersey of the Union for Reform Judaism (“RAC-NJ”) are statewide organizations with distinct but complementary commitments to racial equity, public education, and democratic participation in New Jersey.

SandSJ is a Black-led, Trenton-based, racial justice nonprofit organization dedicated to abolishing structural racism and advancing liberation for Black and historically marginalized communities through faith-rooted advocacy, education, and community organizing. Founded in 2018, SandSJ works to dismantle systemic inequities across multiple policy areas, including public education, and is actively engaged in efforts to desegregate New Jersey’s schools and challenge policies and practices that perpetuate racial and socioeconomic segregation. SandSJ works directly with impacted communities to address the intergenerational harms caused by segregated and under-resourced schools and to advocate for community-led, structural solutions.

The LWVNJ is the New Jersey chapter of the national League of Women Voters, a nonprofit, nonpartisan, grassroots organization dedicated to empowering voters and defending democracy. For more than a century, the League has worked to ensure that every person has the information, access, and

opportunity necessary to participate fully and effectively in civic life. LWVNJ has a longstanding commitment to public education as a foundational pillar of a functioning democracy and advocates for an equitable, accountable system of elementary and secondary education responsive to the needs of New Jersey's diverse communities. Through its Education Committee, LWVNJ engages in research, policy development, and public education on issues including civics education, school funding, and educational equity, and opposes the diversion of public funds from public schools through vouchers and similar mechanisms.

RAC-NJ, the New Jersey state project of the Religious Action Center of Reform Judaism, has a long-standing commitment to racial and economic justice stemming from its launch in August 2020, with twin goals of increasing nonpartisan civic engagement and addressing New Jersey's long-standing racial and economic inequities. To advance these goals, RAC-NJ organizes Union for Reform Judaism congregations across New Jersey to take collective action in support of public policies that reflect its mission. From 2022 through 2024, RAC-NJ's primary organizing effort was its Learning Together campaign, which brought together clergy to learn and preach about New Jersey's history of school segregation; developed resources and educational events that enabled hundreds of volunteers across the state to engage with its causes and consequences; and activated congregation members to participate in community

conversations—both within their congregations and externally—about how segregation and integration efforts affect their communities and educational opportunity.

The issues presented in this interlocutory appeal—whether the State of New Jersey, through its laws, policies, and inaction, has failed to prevent and remedy systemic racial, ethnic and socioeconomic segregation in public education in violation of the New Jersey Constitution—directly implicate the core missions of *amici*. Persistent segregation in public schools reinforces structural racism, denies children equal educational opportunity, undermines civic engagement, and perpetuates inequality across generations.

Amici submit this brief to provide the Court with community-based, racial justice, civic, and policy perspectives on the profound constitutional and human consequences of the State’s continued maintenance of segregated school systems. *Amici* believe that the Court’s resolution of this case will be critical to advancing racial equity, educational opportunity, and democratic participation for students and families across New Jersey.

PRELIMINARY STATEMENT

More than 70 years after segregation was outlawed in New Jersey—and Brown v. Board of Education declared state-sanctioned school segregation unconstitutional—the State continues to operate a public school system in which students’ educational opportunities remain profoundly shaped by race, ethnicity, and poverty. See generally Brown v. Board of Education, 347 U.S. 483 (1954); Hedgepeth and Williams v. Bd. of Ed. of City of Trenton, 131 N.J.L. 153 (Sup. Ct. 1944). In substantial portions of New Jersey, Black and Latina/o students attend schools that are racially isolated and separated from educational opportunity in ways that are no less troubling than the segregation historically associated with the Jim Crow South and former Confederacy.

This case, widely known as “New Jersey’s Brown v. Board of Education,” comes before this Court on interlocutory appeal, asking whether the State’s continued maintenance of systemic segregation in public education—through its laws, policies, and prolonged inaction—violates the New Jersey Constitution, and calls on this Court to finally tend to Brown’s unfinished business. Latino Action Network et al. v. State of New Jersey et al., No. MER-L-1076-18 (N.J. Super. Ct. Law Div. Oct. 6, 2023). As Plaintiffs-Appellants persuasively argue, the record—particularly undisputed statistics and analysis derived from the State’s own school enrollment data demonstrating severe school segregation—

and longstanding precedent establishing such segregation unconstitutional compel an affirmative answer. See Brief for Plaintiffs-Appellants, Latino Action Network et al. v. State of New Jersey et al., No. A-003471-24, at 10-11 (N.J. App. Div. Sept. 22, 2025) (hereinafter “Pb”).

This brief focuses on the historical context that makes clear that segregation in New Jersey schools is not the product of geography or “parental choice,” but the predictable result of the State’s own policies and decisions. Contra Brief for Defendants-Respondents, Latino Action Network v. State of New Jersey, No. A-002449-23, at 38 (N.J. App. Div. May 28, 2025) (hereinafter “Db”) (arguing that racial imbalance reflects geography and parental choice rather than State action); Pb37 (Pa167-68, ¶¶ 40-41). *Amici* emphasize that acknowledging the State’s liability is the essential first step toward repair—one grounded in the State’s affirmative duty to prevent and remedy segregation so that every student has access to equal protection, meaningful educational opportunity, and full civil inclusion. N.J. Const. art. I, ¶¶ 1, 5; art. VIII, § 4, ¶ 1. The ongoing denial of these guarantees falls most heavily on Black and Latina/o students.

This brief proceeds in three parts. *First*, it demonstrates that New Jersey’s school segregation is the foreseeable result of deliberate State choices—statutes, zoning laws, administrative practices, and policies that established and

preserved racial separation in education. (Point I)

Second, it shows that the State’s continued maintenance of segregated schools inflicts measurable, lifelong harm on Black and Latina/o students and communities, limiting educational attainment, and economic mobility. (Point II)

Finally, it explains that the Constitution’s “thorough and efficient education” and equal-protection clauses safeguard more than academic outcomes; they guarantee the right to participate fully in civic life. *Id.* Recognizing the State’s liability is therefore a democratic act of constitutional repair. (Point III)

STATEMENT OF FACTS AND PROCEDURAL HISTORY¹

For the purposes of this brief, *Amici* accept the statement of facts and procedural history contained in the Plaintiff-Appellants’ Corrected Appellate Division Brief, filed on September 22, 2025, adding the following for procedural context: Shortly thereafter, the State filed its response brief, accompanied by a motion for leave to file an overlength brief, which the Court granted on November 18, 2025. Plaintiffs-Appellants filed their reply brief on January 16,

¹ As amici curiae supporting Plaintiff-Appellants in this interlocutory appeal, amici presents a combined procedural history and statement of facts because the facts relevant to the issues addressed in this brief concern the procedural events surrounding the challenged order.

2026, likewise seeking to leave to exceed the page limit, and the Court granted that motion on February 3, 2026. Amicus briefs are due February 17, 2026. This brief accompanies a motion for leave to participate as *amici curiae* in this interlocutory appeal.

ARGUMENT

Following the New Jersey Supreme Court’s prohibition on segregation in school admissions, and notwithstanding the overall strength of the State’s public education system, New Jersey continues to operate among the most racially segregated public schools in the nation. Rankings: Education – States with the Best Education Systems, U.S. News & World Report;² Gary Orfield et al., New Jersey’s Segregated Schools: Trends and Paths Forward, UCLA Civil Rights Project 6 (Nov. 2017).³

The Garden State ranks seventh nationally in terms of Black-white school segregation. See Gary Orfield & Ryan Pflieger, The Unfinished Battle for Integration in a Multiracial America—From Brown to Now, Civ. Rts. Project 51 (Apr. 2024)⁴ (highlighting that New Jersey has lower exposure of Black students

² Available at [usnews.com/news/best-states/rankings/education](https://www.usnews.com/news/best-states/rankings/education); ISJ1-3.

³ Available at civilrightsproject.ucla.edu/wp-content/uploads/2017/11/New-Jersey-report-final-110917.pdf; ISJ6.

⁴ Available at civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/the-unfinished-battle-for-integration-in-a-multiracial-america-2013-from-brown-to-now/National-Segregation-041624-CORRECTED-for.pdf; ISJ12.

to white students than most states, including Georgia, Alabama, and Mississippi). A 2022 study found that the Newark metro area was the most economically segregated in the country and second nationally in terms of Black-white segregation. See Halley Potter, School Segregation in U.S. Metro Areas, Century Found. (May 2022);⁵ Carrie Spector, 70 Years After Brown v. Board of Education, New Research Shows Rise in School Segregation, Stan. Graduate Sch. of Educ. (May 6, 2024)⁶ (stating that while “[s]chool segregation levels are not at pre-Brown levels . . . they are high and have been rising steadily since the late 1980s.”). These figures underscore a simple and sobering truth: there are two educational systems in New Jersey, one that provides an excellent education for its white students, and the other that continues to separate too many of its other children by race and class, providing those students with fewer opportunities.

The record in this case, which demonstrates pervasive racial and socioeconomic isolation across New Jersey’s public schools, lays this reality bare. In Trenton, for example, Black children attend schools that remain nearly all non-white—conditions this Court condemned more than eight decades ago.

⁵ Available at tcf.org/content/report/school-segregation-in-u-s-metro-areas/; ISJ13-23.

⁶ Available at ed.stanford.edu/news/70-years-after-brown-v-board-education-new-research-shows-rise-school-segregation/; ISJ24-27.

See Hedgepeth, 131 N.J.L. at 153; Amended Complaint ¶ 40(G), Latino Action Network et al. v. State et al., No. MER-L-001076-18 (N.J. Super. Ct. Law Div. Aug. 2, 2019) (hereinafter “Am. Compl.”) (showing Trenton schools remain 98% non-white “with at least 89% in poverty”).

Similar patterns persist throughout the state, where entire districts are separated by race and poverty, while nearby communities remain majority white and comparatively affluent. Pb26, 44; Pa148, 165, 191-196. Plaintiffs-Appellants highlight this in Essex County, where East Orange and neighboring Glen Ridge reflect starkly different student demographics. Pb11; Pa143-44; Pa192. Hundreds of thousands of New Jersey children attend schools that are racially and economically isolated when compared with surrounding districts. Pb37; Pa167-68 ¶¶ 40-41. Such a statewide pattern is not one that individual districts have the authority or capacity to remedy. See In re Petition for Authorization To Conduct A Referendum On Withdrawal Of N. Haledon Sch. Dist. From Passaic Cnty. Manchester Reg’l High Sch., 181 N.J. 161, 181-82 (2004) (quoting Jenkins v. Morris Twp. Sch. Dist., 58 N.J. 483, 506 (1971)).

This racial inequity is not new. Indeed, it is a reflection of generations of state and local decisions designed to create and sustain a system in which children’s educational opportunities continue to be shaped by race and place. See Robinson v. Cahill, 62 N.J. 473, 515-16 (1973) (State bears constitutional

responsibility under the “thorough and efficient” clause to remedy place-based inequities in educational opportunity).

The result is a segregated system that has persisted long after its formal abolition, eroding the Constitution’s promise of equal education for all children and imposing its most profound and enduring harms on Black and Latina/o students and communities. See N.J. Const. art. I, ¶ 1, 5; cf. Lewis v. Harris, 188 N.J. 415, 442-45 (2006); Booker v. Bd. of Educ. Of Plainfield, Union Cnty., 45 N.J. 161, 166-67 (1965). That harm long predates this litigation, and without a finding of liability by this Court and decisive statewide action, it will not end with it.

I. THE STATE’S ENDURING ROLE IN CREATING AND SUSTAINING SCHOOL SEGREGATION

Understanding how New Jersey’s public school segregation developed is essential to understanding the State’s constitutional duty to dismantle it. Drawing on the historical record laid out by the report of the New Jersey Reparations Council, convened by the New Jersey Institute for Social Justice, and on the evidence before this Court, *Amici* trace the throughline of law and policy decisions through which the State constructed and preserved racial, ethnic, and poverty segregation⁷ in education while repeatedly choosing

⁷ “Poverty segregation,” as used here and in Plaintiffs-Appellants’ filings,

withdrawal over repair. See generally N.J. Inst. for Soc. Just., For Such a Time as This: The Nowness of Reparations for Black People in New Jersey 86-150 (2025) (hereinafter “The Nowness of Reparations”).⁸ This history shows that New Jersey’s school segregation is a state-created structure—not merely private choice or demographic drift—and thus falls within the State’s affirmative constitutional duties recognized in In re North Haledon School District Withdrawal, Abbott, and Booker. See In re North Haledon School District Withdrawal, 181 N.J. at 161; Abbott v. Burke, 119 N.J. 287 (1990); Booker, 45 N.J. 161 (1965) (affirming the State’s constitutional obligation to correct inequality and eliminate segregation, regardless of its cause).

A. State Policies and Governance Structures Created and Maintained Racially Segregated Schools Across Generations

Segregated education in New Jersey emerged from State-directed and State-tolerated policies and governance structures designed to deny Black children equal educational opportunities. In the period surrounding the Civil War, public investment in the education of Black children was sporadic and inadequate, leaving many Black communities to rely on churches and private associations to fill the gaps. See The Nowness of Reparations, supra, at 86;

refers to district-level concentrations of students eligible for free or reduced-price lunch. See Am. Compl. ¶ 40(A) & n.11.

⁸ Available at njsj.org/print/njrcreport.pdf; ISJ34-91.

ISJ34. In the early nineteenth century, “Black communities were forced to establish their own schools because State and local authorities would not provide equal access.” See Meagan Raker, The Princeton Plan, Princeton & Slavery.⁹ Even after New Jersey created a state board of education in 1829 and began allocating modest public funds, Black children experienced exclusion or inferior treatment in the public schools that their families helped finance through taxes. See Education, N.J. Almanac;¹⁰ Giles R. Wright, Afro-Americans in New Jersey: A Short History, N.J. Historical Comm’n (1988), at 30-32.¹¹ “An 1846 letter in the New Jersey Freeman described a publicly funded school in Plainfield where Black children were placed in an unheated basement and visited by the teacher only a few times a day, forcing parents to withdraw their children during winter months.” See George Fishman, The African American Struggle for Freedom and Equality: The Development of a People’s Identity, New Jersey, 1624-1850 230 (1997). “The Plainfield school later refused to admit Black students at all.” See id. These practices reflected State-tolerated segregation that set the foundation for the racial separation that followed.

⁹ Available at slavery.princeton.edu/stories/the-princeton-plan; ISJ98-122.

¹⁰ Available at newjerseyalmanac.com/education-backup.html#:~:text=Other%20legislation%20enacted%20in%201829,districts%20to%20appoint%20school%20superintendents; ISJ123-128.

¹¹ Available at nj.gov/state/historical/assets/pdf/topical/afro-americans-in-nj-short-history.pdf; ISJ130-132.

Legal reforms did not eliminate this racialized structure. In 1871, New Jersey became the last of the then-37 states to abolish tuition fees for its system of public elementary and secondary education. See Giles R. Wright, supra, at 32; ISJ132. In 1881, the Legislature prohibited exclusion from public schools based on race, nationality, or religion, but permitted certain segregated facilities for younger children if “voluntarily accepted.” See Lizabeth Cohen, A Consumer’s Republic: The Politics of Mass Consumption in Postwar America 175 (2003). Black families in Trenton successfully invoked the law to demand access to the local all-white school, and the New Jersey Supreme Court enforced the statute. See Hedgepeth, 131 N.J.L. at 153. Although this ruling made segregation explicitly unlawful under state law, racial separation in schools continued in practice for decades, long past the passage of formal prohibitions. See Charlene Richards, Hedgepeth and Williams v. The Board of Education: A Turning Point in the Advancement of Racial Equality, Trenton Daily (Jul. 6, 2020);¹² Greg Flaxman et al., Civ. Rts. Project, A Status Quo of Segregation: Racial and Economic Imbalance in New Jersey Schools, 1989-2010 (Oct. 2013).¹³

¹² Available at trentondaily.com/hedgepeth-williams-and-the-fight-for-education/; ISJ133-134.

¹³ Available at 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; ISJ135-141.

Black parents resisted segregation, including in East Orange between 1899 and 1905, where families protested the district's decision to place Black students in an ungraded classroom. See August Meier & Elliott M. Rudwick, *Early Boycotts of Segregated Schools: The East Orange, New Jersey, Experience, 1899-1906*, 7 *History of Education Quarterly* 1, 22-35 (Spring 1967). Their efforts reflected a broader statewide pattern. By the mid-twentieth century, communities across New Jersey—including in Trenton, Asbury Park, Englewood, Newark, Montclair, Orange, and Teaneck—organized marches, boycotts, and legal challenges demanding equal educational treatment. See Cohen, *supra*, at 250. Despite this sustained community resistance, segregation has nevertheless endured because the State has failed to take meaningful action to dismantle the segregated system it created.

New Jersey's dismantling of the Bordentown School reflects this same dynamic. For nearly seven decades, the State operated Bordentown as an all-Black public boarding school that became a nationally recognized model of educational excellence. See generally Mildred L. Rice Jordan, *Reclaiming African American Students: Legacies, Lessons, and Prescriptions: The Bordentown School Model* 64-66 (2017). Founded and funded by the State, Bordentown provided rigorous academics, vocational training, and civic education to Black students excluded by segregated local systems. See *The*

Nowness of Reparations, *supra*, at 87-88; ISJ35.

Yet after adopting a constitutional mandate to integrate in 1947, the State “never made a meaningful effort” to do so. See Andrea McChristian, N.J. Inst. for Soc. Justice, Bring Our Children Home: A Prison-to-School Pipeline for New Jersey’s Youth 3 (2018).¹⁴ Instead, despite having already shown that it “possessed the institutional knowledge, resources, and capability to build integrated schools of excellence,” the State closed Bordentown entirely in 1955. Report of the Commission Established Under Assembly Concurrent Resolution No. 22, 1955, to Study the Proposed Discontinuance of Bordentown Manual Training School to The New Jersey Legislature June, 1, 1955 (1955).¹⁵ Bordentown thus illustrates the State’s repeated choice of withdrawal over repair when confronted with its obligation to integrate.

To add insult to injury, after its closure, the campus was converted into a youth prison, transforming a state-created institution of opportunity into a means of confinement. Ashanti Jones et al., N.J. Inst. For Soc. Just., From Shackles to Scholarship: A Vision for a 21st Century Bordentown School 4 (Jun. 2024).¹⁶

¹⁴ Available at d3n8a8pro7vhmx.cloudfront.net/njisj/pages/982/attachments/original/1520007695/BordentownFinalCompressed.pdf?1520007695; ISJ142-143.

¹⁵ Available at dspace.njstatelib.org/server/api/core/bitstreams/ab85ee4a-3060-41fc-9c6f-d2dfe314a8ff/content; ISJ144-155.

¹⁶ Available at njisj.org/wp-content/uploads/2024/07/From-Shackles-to-Scholarship-7.24.24-Compressed.pdf; ISJ156-158.

Where the State once invested in Black children’s “leadership and economic independence,” it now operates the Female Secure Care and Intake Facility and the Juvenile Medium Security Facility—an exact reversal of its former constitutional posture. *Id.* The site is now home to one of New Jersey’s three youth prisons, within a system in which Black children are 29 times more likely than white children to be incarcerated—the worst youth incarceration disparity rates in the nation. Joshua Rovner, Black Disparities in Youth Incarceration, The Sent’g Project (Aug. 12, 2025).¹⁷ These racial disparities persist even though Black and white youth commit offenses at similar rates. *Id.*

This transformation from school to prison “is not merely symbolic”; it reflects the broader systemic pipeline in which segregated schools, harsh discipline, and school-based arrests push Black children out of classrooms and into the criminal legal system. Johanna Wald & Daniel J. Losen, Defining and Redirecting a School-to-Prison Pipeline, 99 *New Directions for Youth Dev.* 9, 11 (2003); Annette Haldane Marston, Zero Tolerance Policies and the School to Prison Pipeline, 15 *Interdisciplinary J. Contemp. Res. Bus.* 5 (2009);¹⁸ Examining Discipline Disparities in New Jersey’s High Schools, Pol’y Lab at

¹⁷ Available at sentencingproject.org/fact-sheet/black-disparities-in-youth-incarceration/; ISJ159-160.

¹⁸ Available at files.eric.ed.gov/fulltext/EJ870076.pdf; ISJ165.

Rutgers (2021).¹⁹ That reversal occurred alongside the rise of exclusionary housing practices, underinvestment in Black schools, and segregation reinforced by zoning and funding decisions. See The Nowness of Reparations, supra, at 95-98; ISJ42-45.

These historical patterns demonstrate that New Jersey's public school segregation grew out of State-authorized decisions, State-sanctioned governance structures, and State choices that allowed segregation to persist long after formal prohibitions were enacted. Under the affirmative constitutional framework articulated in Booker and reaffirmed in In re North Haledon School District Withdrawal, the State bears responsibility for the inequality arising from structural segregation, regardless of its cause. See In re North Haledon School District Withdrawal, 181 N.J. at 161; Booker, 45 N.J. 161 (1965).

B. Home Rule, Local Boundary-Drawing, and School Finance Policies Deepened Racial, Ethnic and Poverty Segregation

Segregation in New Jersey intensified in the twentieth century because the State adopted governance, boundary, and financing systems that entrenched racial and wealth divisions and then, tied educational access to the lines those systems created, making the resulting segregation a direct product of State action rather than private choice.

¹⁹ Available at policylab.rutgers.edu/examining-discipline-disparities-in-new-jerseys-high-schools/; ISJ179-183.

After the end of formal slavery, underlying systems of racial exploitation and exclusion shaped the lives of Black residents across the State. See The Nowness of Reparations, supra, at 95; ISJ42. At the same time, New Jersey expanded its uniquely fragmented “home rule” system, “granting 566 municipalities broad control over schools, land use, zoning, and local public resources.” Id. Under New Jersey’s expansive home-rule framework, municipalities exercised broad control over land use and public resources, often using that authority to limit access to schools, parks, libraries, and affordable housing to local taxpayers, reinforcing longstanding patterns of racial and economic exclusion. See Bayard H. Faulkner, New Road to Home Rule, 44 National Municipal Review 4 (Apr. 1955) at 189-191. This system is known as “localism” or “defensive localism,” where political rights and public goods are determined by municipal boundaries that were drawn and maintained by the State. See The Nowness of Reparations, supra, at 95; ISJ42. These boundaries created racially isolated neighborhoods and school districts that persist today. See Am. Compl. ¶¶ 36-41.

Housing policy also shaped the residential patterns that now define New Jersey’s school segregation. For decades, state and federal agencies failed to remedy discriminatory practices, including “redlining by banks and insurance companies and lending rules that excluded Black families from

homeownership.” See The Nowness of Reparations, *supra*, at 80, 96-98; ISJ29, ISJ43-45. In East Orange, for example, urban-renewal powers under the Preiser Act were used to “condemn as ‘blighted’ nearly all the area where Black families lived, displacing residents and replacing their homes with housing far beyond their means.” See *id.*; Cohen, *supra*, at 216-217. Courts also enforced racially restrictive covenants until the mid-twentieth century, limiting where Black families could live and build wealth. See The Nowness of Reparations, *supra*, at 99-100; ISJ46-47.

As Plaintiffs-Appellants explain, these policies produced racially isolated neighborhoods that remain among the most segregated in the nation, including Newark and Camden, and those patterns continue to shape present-day school assignment and district lines. See *id.* at 112-14; Am. Compl. ¶ 28. Because district boundaries track these State-created residential lines, housing segregation—shaped and reinforced by State-driven policies and actions, and coupled with State-mandated school assignment residency requirements—has been a central mechanism through which State law and policy have sustained school segregation over time. Sharon Otterman, New Jersey Law Codifies School Segregation, Suit Says, N.Y. Times (May 17, 2018);²⁰ Cohen, *supra*, at

²⁰ Available at [nytimes.com/2018/05/17/nyregion/new-jersey-school-segregation-suit.html](https://www.nytimes.com/2018/05/17/nyregion/new-jersey-school-segregation-suit.html); ISJ184-186.

216 (2003).

Education finance compounded this segregation. The State’s reliance on local property taxes produced profound spending disparities between affluent suburbs and under-resourced urban districts serving large Black student populations. See The Nowness of Reparations, supra, at 119; ISJ63. In 1981, the Education Law Center challenged this system on behalf of students in several urban districts, leading to the landmark Abbott decisions, which held that the funding scheme at the time violated the State Constitution’s “thorough and efficient” clause and required the State to remedy such inequities. Id.; Abbott, 119 N.J. at 287. Although Abbott led to significant investments in under-resourced districts, the Court’s intervention did not dismantle the segregative structure of municipal boundary-drawing, zoning, and district lines. See The History of Abbott v. Burke, Educ. Law Ctr.²¹ The State’s funding reforms addressed certain resource issues but not the underlying segregation that State policies had produced. See id.

These systems, which resulted in separate, racialized school districts and unequal educational conditions, were created and maintained by the State. They produced predictable racial and economic separation, and under New Jersey’s Constitution, segregation that foreseeably results from State-constructed

²¹ Available at edlawcenter.org/litigation/abbott-history/; ISJ187-196.

boundaries and funding schemes is State action. See N.J. Const. art. I, ¶¶ 1, 5.; Abbott, 119 N.J. at 385-86; Booker, 45 N.J. at 170-72.

C. Present-Day Segregation Is the Foreseeable Result of State-Sanctioned Policies

New Jersey’s racial segregation is not a relic of the past. It is the continuing effect of the State’s governance decisions, local boundary structures, and policy choices. Although New Jersey has adopted race-neutral language, it operates in practice to preserve racially isolated schools and neighborhoods. See The Nowness of Reparations, supra, at 155; ISJ96. Referring, for example, to segregation in New Jersey as “de facto,” can misleadingly attribute it to private choices rather than the government action that created and maintained it. See Elise C. Boddie, The Muddled Distinction Between De Jure and De Facto Segregation, The Oxford Handbook of U.S. Education Law, 253-274 (2020).²² That framing obscures the State’s central role—through laws regarding zoning, school siting, district lines, and municipal fragmentation—in creating and maintaining the conditions for racial separation. New Jersey’s segregation is therefore “anything but accidental.” See The Nowness of Reparations, supra, at 155; ISJ96. To be clear, the pervasive nature of racial segregation in New Jersey

²² Explaining that “de facto” segregation refers to segregation said to arise from private residential patterns and “de jure” segregation to state-imposed separation, and arguing that this distinction is artificial and obscures the government policies that created and maintain racial separation.

is the result of State-designed and State-permitted systems that formed racially isolated districts and limited educational opportunity for Black and Latina/o students. *Boddie*, supra, at 274.

Residential segregation continues to shape educational outcomes as communities of color face overcrowded schools, lower per-pupil spending, and inadequate materials, all symptoms of disinvestment that restrict upward social mobility. Id. Because many schools built during periods of public investment were located in white communities, schools serving Black and Latina/o neighborhoods today tend to be larger, more crowded, chronically under-resourced and characterized by extreme concentrations of poverty relative to whiter surrounding districts. Id. Many Black and Latina/o students remain in neighborhoods with chronic underinvestment, while district boundaries ensure that nearby wealthier and whiter schools remain inaccessible. Id. Courts' requirement of explicit discriminatory intent in some equal protection contexts has allowed structural segregation to persist under race-neutral policy language, leaving the underlying inequality unaddressed. Id.

The constitutional harm persists, as it has for more than a century. That harm includes the enduring and manufactured narrative segregation conveys—that Black and Latina/o students are undervalued and excluded, echoing scholars' observations that such conditions suggest students are “inferior... and

ousted from opportunities.” See The Nowness of Reparations, *supra*, at 155; ISJ96. Notably, New Jersey’s system of segregation is harmful to its white students too. See Halley Potter et al., A New Wave of School Integration: Districts and Charters Pursuing Socioeconomic Diversity, Century Found. (Feb. 19, 2016)²³ (noting decades of research showing that students in racially diverse schools have stronger test scores, increased college attendance rates, improved critical thinking, and reduced prejudice, compared to similar peers in segregated schools).

Under New Jersey’s Constitution—which imposes affirmative obligations to secure equal educational and civic opportunity—the State cannot treat segregation as a natural or private phenomenon. See N.J. Const. art. I, ¶¶ 1, 5; art. VIII, § 4, ¶ 1; see e.g., S. Burlington Cnty. N.A.A.C.P. v. Mount Laurel Twp., 92 N.J. 158, 208-211 (1983); Booker, 45 N.J. at 170-72; Hedgepeth, 131 N.J.L. at 517-18. It is the foreseeable outcome of State-created systems, and in any event the State bears responsibility for dismantling it.

II. SEGREGATION HAS LASTING CONSEQUENCES THAT DENY EQUAL EDUCATIONAL AND ECONOMIC OPPORTUNITY

Segregation in New Jersey’s public schools produces concrete, measurable harms that deny Black and Latina/o students equal educational and

²³ Available at [tcf.org/content/report/a-new-wave-of-school-integration/](https://www.tcf.org/content/report/a-new-wave-of-school-integration/); ISJ197-214.

economic opportunity. Decades of research confirm that segregated schools depress achievement, reduce access to advanced coursework and college, and limit lifetime earnings and intergenerational mobility. Those harms matter under New Jersey’s Constitution, which prohibits segregation in public schools and requires a “thorough and efficient” system that enables the least advantaged child to compete fairly with the most advantaged. See N.J. Const. art. VIII, § 4, ¶ 1; Abbott, 119 N.J. at 287, 367-69, 385-89; Robinson, 62 N.J. at 473, 515-16.

A. Segregation Creates a System of Unequal Opportunity

Nationally, racial segregation in schools consistently leads to lower academic achievement and educational attainment, which in turn limits students’ lifetime opportunities. See Orfield et al., supra, at 10; ISJ10. Ten years of data from thousands of school districts reveal a clear link between trends of segregation and Black-white achievement gaps. See K.T. Matheny et al., Increasing School Segregation Widens White-Black Achievement Gaps, Educ. Opportunity Project (Feb. 2021).²⁴ The effects of segregation begin early in children’s schooling experience: school segregation is strongly associated with larger third-grade gaps and faster widening of Black-white and Latina/o-white achievement gaps through eighth grade. See Sean F. Reardon et al., Is Separate

²⁴ Available at edopportunity.org/discoveries/segregation-leads-to-inequality/; ISJ215-216.

Still Unequal? New Evidence on School Segregation and Racial Academic Achievement Gaps, 1 (Stan. Ctr. for Educ. Pol’y Analysis Working Paper, Paper No. 19-06, 2022).²⁵

Due to segregation and a consistent lack of resources, students in high-poverty, high-people of color schools face higher suspension and expulsion rates, lower test scores, and reduced graduation and college success rates. See Orfield et al., supra, at 10; ISJ10. Dropout rates are especially severe in these settings. Id. Even when students from such schools graduate, research shows that they are less likely to succeed in college, even when their test scores are similar to those of their peers. Id. In short, segregation leaves lasting and damaging effects on students’ educational and life outcomes, which the State can neither ignore nor reconcile with its constitutional commitments. Id.; See also Vandeen A. Campbell et al., Segregated Schooling in New Jersey: The Distribution of Opportunities to Learn by Race, Ethnicity and Class, Joseph C. Cornwall Ctr. for Metro. Stud., Rutgers Univ. 36 (Feb 2023).²⁶

B. New Jersey’s Racially and Economically Segregated Schools Create Inferior Educational Conditions

As discussed, New Jersey’s K-12 schools remain among the most racially

²⁵ Available at cepa.stanford.edu/sites/default/files/wp19-06-v082022.pdf; ISJ217-219.

²⁶ Available at rutgers.app.box.com/s/wyzbzyrt42jabifa0fp7vqw9fg0rpmjb; ISJ223.

and economically segregated in the country. See Bruce Baker & Mark Webber, Separate And Unequal: Racial And Ethnic Segregation And The Case For School Funding Reparations In New Jersey (Sept. 2021).²⁷ New Jersey's racially and economically segregated schooling environments deprive students of supportive learning conditions and strong academic outcomes. See Campbell et al., supra, at 5; ISJ223. Specifically, New Jersey students in segregated schooling environments are more likely to attend schools with concentrated student needs, including higher proportions of English language learners, and to experience higher student and teacher absenteeism and more frequent use of exclusionary disciplinary practices. Id. at 38. These schools also tend to offer fewer advanced courses, especially in math and science, despite student interest. Id. at 8. Furthermore, students in such schools have access to fewer guidance counselors and face higher student-teacher ratios, further undermining educational quality and support. Id. at 37.

C. Segregated Schooling Environments Measurably Reduce Access to Advanced Coursework and College Preparation

Access to academic opportunities, such as Advanced Placement (AP), International Baccalaureate (IB), and Dual Enrollment programs—where high

²⁷ Available at njpp.org/publications/report/separate-and-unequal-racial-and-ethnic-segregation-and-the-case-for-school-funding-reparations-in-new-jersey/; ISJ224-241.

school students take college-level courses that often earn both high school and college credit—plays a crucial role in shaping students’ trajectories toward college enrollment, degree completion, and eventually meaningful employment. These courses allow students to gain experience with college-level work, earn college credits before starting college, and in the long-run, reduce the cost and time required to complete a degree. See What is AP?, Coll. Bd..²⁸

Research shows that taking even one AP course in high school measurably boosts college success, with the largest predicted gains in first-year college grades and on-time bachelor’s degree completion occurring when students move from zero to one AP exam and from one to two. See Jonathan J. Beard et al., Summarizing Research on the Relationships Between the Number of APs, AP Performance, and College Outcomes, Coll. Bd. (Jun. 2023).²⁹ Moreover, AP exam takers have higher four-year college graduation rates than comparable non-AP students—even when they didn’t earn a passing score. See The Value of AP in Retention, Coll. Bd..³⁰

Dual enrollment programs, in which high schools partner with an

²⁸ Available at apstudents.collegeboard.org/what-is-ap; ISJ242-245.

²⁹ Available at research.collegeboard.org/media/pdf/Summary%20of%20Research%20on%20the%20Relationships%20Between%20Number%20of%20APs%20and%20Performance%20with%20College%20Outcomes.pdf; ISJ246.

³⁰ Available at higher.collegeboard.org/media/pdf/enrollment-retention.pdf; ISJ247-248.

institution of higher education to offer coursework that can be applied towards both high school and postsecondary degrees, show similarly strong benefits, with participating students more likely to enroll in college immediately after high school and earning credentials at higher rates than their non-dual-enrolled peers. See Tatiana Velasco et al., The Postsecondary Outcomes Of High School Dual Enrollment Students: A National And State-By-State Analysis, Cmty. Coll. Rsch. Ctr. (Oct. 2024) 2.³¹ Beyond educational attainment, dual enrollment has also been linked to higher early-career earnings. See Angela K. Henneberger et al., A Longitudinal Study Examining Dual Enrollment as a Strategy for Easing the Transition to College and Career for Emerging Adults, 10 Emerging Adulthood 1 (May 7, 2020).³²

In New Jersey, access to academic opportunities like AP classes and dual enrollment programs reveals a deep racial disparity. The New Jersey Department of Education reports that among juniors and seniors, only 19 percent of Black students and 23 percent of Latina/o students took at least one AP class, compared to 41 percent of white students and 68 percent of Asian students. See College and Career Readiness: AP/IB and Dual Enrollment Participation by

³¹ Available at ccrc.tc.columbia.edu/wp-content/uploads/2024/10/Postsec-Outcomes-Dual-Enrollment-Students-Revised-2025.pdf; ISJ252.

³² Available at journals.sagepub.com/doi/abs/10.1177/2167696820922052; ISJ253.

Student Group, N.J. School Performance Report (2020-2021) 16.³³ Seventy-six percent of upperclassmen in affluent, predominantly white Livingston enroll in AP courses, compared with just 12 percent in nearby Irvington, a largely Black and Latina/o community with higher poverty rates. See Patrick Wall, In New Jersey, thousands of Black and Hispanic students are shut out of AP classes, Chalkbeat (Apr. 26, 2022).³⁴ Statewide, Black students are four times more likely than white students to attend schools that offer three or fewer AP courses, while white students are twice as likely to attend schools with 18 or more. See Roby Chatterji et al., The Funnel to Passing AP Exams, Ctr. for American Progress (Jun. 30, 2021).³⁵

The same racial inequities appear in New Jersey's dual enrollment program. According to the State's own data, in the 2020-2021 school year, 18.9 percent of white high school students took at least one dual enrollment course—more than twice the rate of Black students (8.2 percent) and nearly double that of Latino students (9.8 percent). See Dual Enrollment Study Commission Report 2022, N.J. Dep't of Educ. 29 (2022).³⁶ As a result, segregated schools

³³ Available at nj.gov/education/sprreports/202021/State-Detail/St.pdf; ISJ254.

³⁴ Available at chalkbeat.org/newark/2022/4/26/23042976/new-jersey-ap-classes-race-access/; ISJ255-265.

³⁵ Available at americanprogress.org/article/funnel-passing-ap-exams/#Ca=10; ISJ266-269.

³⁶ Available at

deprive Black and Latina/o students of opportunities that will boost their college enrollment, retention, and graduation, and ultimately impact their future earnings—opportunities that are readily available to their white peers. This runs counter to the purpose of public education, which must enable the least advantaged child to compete fairly with the most advantaged—a system that will not tolerate discriminatory treatment. See Bd. of Educ. of Borough of Englewood Cliffs, Bergen Cnty. v. Bd. of Educ. of City of Englewood, Bergen Cnty., 257 N.J. Super. 413, 451-52 (App. Div. 1992), aff'd, 132 N.J. 327 (1993) (citing Abbott, 119 N.J. at 287; Robinson, 62 N.J. at 513.).

As the State reports on these inequities in educational opportunities, it is well aware of their existence. The State must also acknowledge that these disparities are the product of a long and enduring history of its discriminatory policies. This segregation caused longstanding housing and economic discrimination, and strict application of neighborhood school districting can result in the ongoing denial of equal educational opportunities. See Booker, 45 N.J. at 161, 168. The State therefore bears a clear responsibility to finally confront and remedy these inequities.

nj.gov/education/cte/dualenrollment/docs/DualEnrollmentStudyCommissionReport2022.pdf; ISJ271.

D. Segregation’s Effects Extend into Adulthood by Lowering Intergenerational Mobility and Lifetime Earnings

Educational attainment is a key lever for economic mobility. By maintaining a segregated system of education, the State perpetuates and reinforces inequity in the quality of schooling, graduation rates, and college entrance and completion—all of which have led to New Jersey’s staggering racial wealth gap.

In white New Jersey, the median net wealth of families is \$662,500. But by design in Black and Latina/o New Jersey, it is less than \$20,000—a gap of more than \$600,000. See Laura Sullivan et al., The Two New Jerseys: A Deepening Divide, N.J. Inst. For Soc. Just. (2025) 2 (hereinafter “A Deepening Divide”).³⁷ This divide was created and sustained through State-sanctioned policies throughout New Jersey’s history, including slavery, land grants to white families, discriminatory housing and lending practices, appraisal bias, redlining, and segregation. See id.; Harbani Ahuja et al., Two New Jerseys: One State of Inequity, N.J. Inst. For Soc. Just. 2 (2025).³⁸

As the New Jersey Supreme Court recognized in Booker, the State has an obligation to address this segregation. 45 N.J. at 170 (“It is neither just nor sensible to proscribe segregation having its basis in affirmative state action

³⁷ Available at njsj.org/print/deepeningdivide.pdf; ISJ273.

³⁸ Available at njsj.org/print/stateofinequity.pdf; ISJ275.

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.”). This is especially true given that the consequences of these policies persist across generations.

Because Black families have less generational wealth and fewer financial assets, they are often forced to borrow more for college, accumulate greater debt, and face more difficulty repaying it. See Laura Sullivan et al., Making the Two New Jerseys One: Closing the \$300,000 Racial Wealth Gap in the Garden State, N.J. Inst. for Soc. Just. 20 (2022).³⁹ At graduation, Black students owe roughly 50 percent more than white students—a gap that doubles within four years. See Peter Granville, Parent PLUS Borrowers: The Hidden Casualties of the Student Debt Crisis, Century Found. (May 31, 2022);⁴⁰ see also Judith Scott-Clayton & Jing Li, Black-white Disparity in Student Loan Debt More Than Triples After Graduation, Brookings (Oct. 20, 2016).⁴¹

Systemic barriers to employment compound this problem. See Tiara Moultrie et al., Freed from Debt: A Racial Justice Approach to Student Loan

³⁹ Available at assets.nationbuilder.com/njisj/pages/689/attachments/original/1645217098/Making_the_Two_New_Jerseys_One_2.15.22-compressed.pdf; ISJ277.

⁴⁰ Available at tcf.org/content/report/parent-plus-borrowers-the-hidden-casualties-of-the-student-debt-crisis/?session=1; ISJ278-299.

⁴¹ Available at brookings.edu/articles/black-white-disparity-in-student-loan-debt-more-than-triples-after-graduation/; ISJ300-306.

Reform in New Jersey, N.J. Inst. for Soc. Just. 5 (2020).⁴² Black borrowers are more likely to struggle with repayment and default on loans, damaging credit scores, restricting access to homeownership and credit, and further deepening the racial wealth divide. See id.; Laura Sullivan et al., Stalling Dreams: How Student Debt is Disrupting Life Chances and Widening the Racial Wealth Gap, Inst. on Assets and Soc. Pol’y 5 (2019).⁴³ While higher education is often seen as a path to economic mobility, Black college-educated households hold less than one-fifth of the wealth of their white counterparts. See Joanna Taylor & Tatjana Meschede, Inherited Prospects: The Importance of Financial Transfers for White and Black College-Educated Households’ Wealth Trajectories, 7 Am. J. Econ. & Soc. 1052, 1058-59 (2018); Darrick Hamilton et al., Umbrellas Don’t Make it Rain: Why Studying and Working Hard Isn’t Enough for Black Americans, The New School 5 (Apr. 2015).⁴⁴ This gulf is a predictable consequence of unequal educational opportunity. A segregated school system channels students into unequal labor market and wealth-building opportunities ensuring that early disparities harden into lifelong gaps.

⁴² Available at d3n8a8pro7vhmx.cloudfront.net/njisj/pages/689/attachments/original/1593521244/Freed_From_Debt_Report.pdf; ISJ308.

⁴³ Available at heller.brandeis.edu/iasp/pdfs/racial-wealth-equity/racial-wealth-gap/stallingdreams-how-student-debt-is-disrupting-lifchances.pdf; ISJ310.

⁴⁴ Available at insightcced.org/wp-content/uploads/2015/08/Umbrellas_Dont_Make_It_Rain_Final.pdf; ISJ312.

For instance, homeownership, a primary driver of the wealth gap, is deeply unequal in New Jersey, where 76.6 percent of white households own homes, compared to 41.3 percent of Black households and 40.4 percent of Latina/o households. See A Deepening Divide, *supra*, at 4; ISJ273. Because home equity forms the core of household wealth in the United States, lower homeownership rates amongst Black and Latina/o families significantly limit their ability to build and transfer generational wealth. Id. Even when they do own homes, segregated neighborhoods and discriminatory market conditions reduce the value and return on those investments compared to white homeowners. See Harbani Ahuja et al., *supra*, at 2; ISJ275.

The State's maintenance of racial and economic segregation in public schools has caused measurable, lifelong harm to Black and Latina/o students and communities—restricting educational attainment, narrowing college access, impeding intergenerational mobility, and constraining economic participation. By preserving a segregated system, the State fails to exercise its own power and duty to create integrated, equitable educational environments. See Jenkins, 58 N.J. 483, 505-06, 508; Booker, 45 N.J. at 173-174. By neglecting to act, the State effectively denies Black and Latina/o students the full educational advantages that integrated schools provide.

III. RECOGNIZING THE STATE’S LIABILITY MARKS THE FIRST ACT OF CONSTITUTIONAL REPAIR

New Jersey’s Constitution has long required the State to secure equality rather than simply refrain from intentional discrimination. Recognizing liability in this case is therefore not punitive—it is corrective. It is the mechanism through which the State can finally fulfill its affirmative obligations under the “thorough and efficient” education and equal protection clauses. See Abbott, 100 N.J. at 295-96; Robinson, 62 N.J. at 513-14 (holding that the State bears an ongoing constitutional duty to remedy any failure to provide a thorough and efficient education, regardless of its source). These constitutional injuries fall most heavily on Black and Latina/o children, whose educational and civic opportunities have long been constrained by state-created patterns of racial isolation. Both the thorough and efficient clause and the equal protection clause guarantee more than physical access to a school building. They protect each child’s right to participate fully in the civic life of the community. See Booker, 45 N.J. at 170-71 (explaining that education lays the foundation for good citizenship and “broad participation in the mainstream of affairs”).

A finding of liability in this case is consistent with this Court’s precedents. The Court has repeatedly held that equality in New Jersey is an active, continuing obligation that requires the State to act when inequality persists. Mount Laurel II, 92 N.J. at 208-13; Booker, 45 N.J. at 170-72 (emphasizing that

constitutional equality in New Jersey imposes an ongoing, affirmative obligation on the State to remedy structural inequality).

Recognizing liability marks the beginning of constitutional repair as it affirms the State's responsibility to address the segregation it helped produce and to restore the civic and educational equality that the Constitution demands. Integrated education is a constitutional commitment rather than a matter of social preference or "parental choice" as the State claims. Contra Db38. It embodies the democratic purpose of the "thorough and efficient" system of public education. Booker, 45 N.J. at 170.

A. New Jersey's Constitutional Tradition of Affirmative Equality Duties

This Court's precedents establish that New Jersey's equality guarantees require affirmative state action. In Booker, the Court held that segregation, whether created by law or by circumstance, undermines both educational adequacy and frustrates the civic purpose of public education. 45 N.J. at 169-72, 178-81 (majority opinion), 182-86 (Hall, J.). In defining a "thorough and efficient" education, the Court has recognized that schooling serves a civic function: preparing children to live, learn, and participate alongside others in a democratic society. Id. at 170-71 (majority opinion), 189-91 (Hall, J.). Even unintentional segregation produces stigma and feelings of inferiority that inhibit learning and impede equal participation. Id. at 167 (majority opinion), 183-86

(Hall, J.). Booker therefore linked educational adequacy with democratic participation and emphasized that the State must eliminate conditions that impede those constitutional aims.

The Court reaffirmed this principle in Lewis. Equality under Article I, Paragraph 1 embodies a substantive guarantee of equal status under the law—often described as equal dignity and full citizenship—and requires the State to secure equality on equal terms, not merely to refrain from discrimination. Lewis, 188 N.J. at 442-43. Accordingly, the Court ordered the Legislature to act within 180 days to remedy a statutory scheme that denied same-sex couples the full exercise of their constitutional rights and equal access to the legal status and benefits of marriage, underscoring that constitutional equality may require affirmative state action to ensure equal access to public institutions. Id. at 463.

The same affirmative duty guided the Court’s decision in In re North Haledon School District Withdrawal, where it held that the State has both the power and the obligation to act to prevent segregation, and that education authorities must take affirmative steps to address local actions or demographic changes that threaten racial imbalance. 181 N.J. at 176-82 (2004). The Commissioner and Board may not adopt an “attitude of helplessness” but must anticipate and blunt segregation-producing trends. Id. at 181-82. Maintaining diverse schools is a necessary component of a “thorough and efficient”

education and may require equitable fiscal remedies. Id. at 178-79, 185-86.

In Jenkins, the Court further recognized that municipalities are not sovereign actors capable of limiting statewide constitutional obligations. 58 N.J. at 483, 500-01. School districts and municipalities are creatures of the State and may not act in ways that frustrate statewide equality mandates. Id. The Court confirmed that the Commissioner has broad authority to prevent district withdrawals and to order regionalization when necessary to avoid segregation in fact. Id.

These decisions form a coherent doctrine. New Jersey's Constitution treats equality as an ongoing public duty that requires affirmative state action. Historical developments in the State's constitutional structure reinforce this understanding. The 1844 Constitution placed the Bill of Rights at the front of the document to emphasize the primacy of individual rights. Robert F. Williams & Ronald K. Chen, The New Jersey State Constitution 15 (Oxford Univ. Press, Inc., 3d ed. 2023). The 1875 amendments elevated public education to a constitutional mandate by requiring the Legislature to maintain a "thorough and efficient system of free public schools." Id. at 19. The 1947 Constitution continued this trajectory by incorporating robust anti-discrimination guarantees, gender equality protections, and labor rights. Id. at 22-26. Commentators have observed that New Jersey has since led the reemergence of state constitutional

law, developing broader commitments to equality and due process than the federal baseline. Id. at 27-36.

B. How State Policies Betrayed Those Ideals and Created the Constitutional Injury

Yet, the historical record outlined in Argument I demonstrates how far actual state practice diverged from constitutional command. For generations, these departures have fallen disproportionately on Black and Latina/o students, who are most directly affected by the segregation-producing policies described above. Although New Jersey's Constitution requires the State to act affirmatively to secure equality, state and local governments repeatedly reinforced segregation in both housing and education. Redlining, exclusionary zoning, and local governance arrangements produced enduring racial and economic isolation, and limited enforcement of anti-discrimination laws allowing these inequities to persist. See The Nowness of Reparations, supra, at 80, 96-98; ISJ29, ISJ43-45; Cohen, supra, at 54; Faulkner, supra, at 189-191. Education policy reflected the same dynamic. Racial exclusion in schools was formally abolished in 1881, yet Black students remain segregated in inferior facilities to this day. See Cohen, supra, at 175. These patterns show that disparate treatment has persisted through state-sanctioned and state-permitted structures.

As previously discussed, the closure of the State-funded Bordentown

School in 1955 illustrated the State's retreat from its constitutional duty. Founded to provide rigorous academic and vocational education to Black students excluded from segregated local systems, the school was shuttered, and its campus repurposed as a juvenile correctional facility rather than integrated. See The Nowness of Reparations, *supra*, at 86-89; ISJ34-36; Jones et al., *supra*, at 4; ISJ156-158. Even landmark decisions such as Abbott were limited to remedying funding inequities within districts and did not reach the problem of structural segregation across district lines. 119 N.J. at 287, 340; The History of Abbott v. Burke, Educ. Law Ctr.; ISJ187-196. Funding reforms improved resources in many communities but did not undo the patterns of racial and economic separation that state and local policies had entrenched over generations. These histories demonstrate that New Jersey's constitutional ideals remain aspirational and unrealized. State institutions often deepened the very inequities that the Constitution sought to eliminate. See The Nowness of Reparations, *supra*, at 112-119; ISJ57-63.

These failures carry constitutional weight. Because the Constitution imposes affirmative duties, the State's inaction in the face of foreseeable and preventable segregation is itself a constitutional injury. Historical choices by state and local actors show not only a failure to meet constitutional obligations, but a pattern of state conduct that exacerbated inequality. Recognizing liability

in this context therefore aligns the State’s present conduct with the Constitution’s affirmative commands rather than imposing a novel sanction.

Liability operates as the legal mechanism through which the State begins to correct longstanding violations of its constitutional duties. It acknowledges that the State, having played a role in producing and perpetuating segregation, must also play a role in remedying it. In this way, liability is a necessary step toward restoring the constitutional commitments that New Jersey’s own history repeatedly compromised. *Id.* at 149, 162.

C. Constitutional Repair Restores Integrated Education as a Core Civic Function

Integrated education is not a matter of social preference. It is a civic function that the New Jersey Constitution protects. The mandate for a “thorough and efficient” system of public education has always encompassed more than academic instruction; it includes the preparation of students for full participation in the democratic life of the State. *Id.* at 140-144. The State’s youth incarceration system illustrates the consequences of failing to meet that obligation, removing young people—disproportionately Black youth—from schools, communities, and the pathways to civic participation that education is meant to provide. *Id.* at 142. For communities long excluded from equal opportunity, these harms accumulate over time and limit pathways to participation in juries, public service, and electoral life. *Id.* at 140-50; *see*

generally Graham Russell Gao Hodges, Black New Jersey: 1644 to the Present Day 14 (Rutgers Univ. Press 2018). Such outcomes frustrate the democratic purposes that the education clause was designed to secure.

This Court has long recognized that a thorough and efficient education must equip children for democratic life, including by teaching them “to respect and live with one another” in multiracial communities. Booker, 45 N.J. at 170-71. A system that isolates students by race or class cannot meet that constitutional charge. Segregation diminishes both educational adequacy and civic equality, and it undermines the constitutional promise of equal citizenship that the State is required to uphold.

When the constitutional injury is segregation, the corresponding remedy is integration. Liability triggers the affirmative state action that the Constitution has always envisioned. It enables the State to restore the civic and educational functions that segregation distorts. Recognizing liability therefore serves not only to correct past wrongs but also to reestablish the constitutional integrity of the public school system and to ensure that Black and Latina/o students can participate fully in its civic and educational benefits.

The Constitution has always tied legal obligation to public purpose. Repair in education is the restoration of that purpose. It links acknowledgment with action and transforms constitutional ideals into operative commitments.

See The Nowness of Reparations, *supra*, at 149, 162; ISJ90, ISJ97. *Amici* respectfully submit that this understanding of repair is essential to renewing public confidence in the law. When the Constitution is interpreted as an instrument capable of remedying inequality rather than perpetuating it, it strengthens the belief that law can serve as a means of shared belonging and equal participation. Recognition of liability marks not an endpoint, but a beginning. It opens the path toward making New Jersey's constitutional promise real for all of its residents.

CONCLUSION

The history before this Court shows that New Jersey's school segregation is the direct and foreseeable product of State-created boundaries, policies, and systems that separated children by race and poverty and allowed those divisions to harden across generations. New Jersey's constitutional commitment to racial equity is hollow unless it includes a duty to redress the segregative conditions the State itself helped create. Because the Constitution requires the State to secure equal educational and civic opportunity, it cannot disclaim responsibility for the structures it produced. A finding of liability is therefore the essential first step toward dismantling the segregation that denies Black and Latina/o students the full promise of public education. *Amici* respectfully urge the Court to reverse the denial of summary judgment and enter judgment on liability so

New Jersey can finally begin the work of dismantling the segregation the State's own policies produced.

Dated: February 10, 2026

Respectfully submitted,

/s/ Micauri Vargas
Micauri Vargas, Esq. (337522021)
NEW JERSEY INSTITUTE FOR
SOCIAL JUSTICE
60 Park Place, Suite 511
Newark, NJ 07102
(973) 624-9400
mvargas@njisj.org

Counsel for Proposed Amici