
New York Supreme Court

Appellate Division—Third Department

LARRY J. and MARY FRANCES MAISTO, JULIE RODRIGUEZ, LORI L. COBB, THOMAS POPE, MARK and JENNIFER PANEBIANCO, GRACE G. JOHNSON, Parents of Students in the Jamestown City School District as Representatives of Their Minor Children, CHRISTOPHER J. FARRELL, Parent of a Student in the Kingston City School District as Representative of His Minor Child, CURTIS L. BREWINGTON, SR., Parent of a Student in the Mt. Vernon City School District as Representative of His Minor Children, NELLIE STEWART, ROBIN JOHNSON, EDWARD POPPITI, DAWN FUCHECK, PAMELA R. RESCH, SHARON CURRIE, LEONA M. FREE, ELIZABETH ROBINSON, ZSA ZSA HOLMES, TANISHA JACKSON, ALMETRA MURDOCK, TONIA PARKER, Parents of Students in the Newburgh Enlarged City School District as Representatives of Their Minor Children, DAWN RALPH, Parent of a Student in the Niagara Falls City School District as Representative of Her Minor Child, KELLY DECKER, Parent of a Student in the Port Jervis City School District as Representative of Her Minor Child, SAKIMA A.G. BROWN, Parent of a Student in the Poughkeepsie School District as Representative of Her Minor Child, ALESIA MCDANIEL, RHONDA ANGRILLI-RUSSELL, ZULIA MARTIN, Parents of Students in the Utica City School District as Representatives of Their Minor Children,

Case No.:
CV-25-0484

Plaintiffs-Appellants,

— against —

STATE OF NEW YORK,

Defendant-Respondent.

BRIEF FOR OF *AMICI CURIAE* FIFTEEN STATEWIDE EDUCATION AND CHILDREN'S RIGHTS ORGANIZATIONS

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INTEREST OF *AMICI CURIAE*

Advocates for Children of New York (“AFC”) has worked for more than fifty years to ensure a high-quality education for New York students who face barriers to academic success, focusing on students from low-income backgrounds. Based in New York City, AFC helps individual families obtain the educational support their children need, while pressing for systemic reform of educational policies and practices through advocacy and impact litigation.

The **Alliance for Quality Education** (“AQE”), founded in 2000, is a statewide coalition of community groups who organize parents and people in parent relation, teachers, and community members who work to ensure that every child in New York State receives a quality education. Specifically, AQE advocates for quality teaching for all students, and sufficient and equitable resources for all schools.

The **Center for Independence of the Disabled, New York** (“CIDNY”) is an Independent Living Center based in New York City. CIDNY provides critical services to people with disabilities that address the social determinants of physical health, mental health, education, employment, housing, and transportation. CIDNY helps people with disabilities navigate the ever-changing service system, and enables them to live independent, fully integrated lives in the community. Education is a critical component of this endeavor.

Children's Aid, founded in 1853, helps children in poverty succeed and thrive by providing comprehensive supports to nearly 50,000 children and families in high-needs New York City neighborhoods.

The Children's Agenda ("TCA"), founded in 2004, improves the health, education, and success of children by advocating for effective, equitable policies, especially for families most impacted by poverty, racism, health inequities, and trauma. Based in Rochester, NY, TCA is committed to ensuring all students in the Greater Rochester Region have access to a quality education.

The **Citizens' Committee for Children of New York** ("CCC") has been an independent voice for children advancing child and family well-being through deep expertise in data, policy and child-research, advocacy, and civic engagement for over 80 years. CCC champions proven solutions and mobilizes allies to secure reforms that improve child outcomes and promote equity.

Dignity in Schools Campaign of New York ("DSC-NY") has built power with students, parents, teachers, and community advocates to create safe and caring environments in NYC Public Schools and to end the school-to-prison and school-to-detention-and-deportation pipelines. Their citywide coalition seeks to make public schools prioritize restorative justice and support students' well-being.

EdTrust-New York is a statewide education policy and advocacy organization focused first and foremost on doing right by New York's children.

Through advocacy, partnerships, and data-driven tools, they work to ensure that students of color and those from low-income backgrounds have equitable access to high-quality education from early childhood through higher education and beyond.

Educators for Excellence-New York (“E4E-NY”), founded by public school teachers, is a movement of more than 18,000 New York City educators, united around a common set of values and principles to improve student learning and elevate the teaching profession. E4E-NY educators work together to elevate educator voices to identify issues that impact schools, and create solutions to these challenges.

The **Feerick Center for Social Justice**, housed within Fordham Law School, advances the rights of marginalized and low-income New Yorkers through legal service, collaboration, and education. Through its Education Equity Program, the Center convenes advocates, researchers, and community stakeholders to advance equitable education policies and improve access to educational opportunities for underserved students across New York City.

The **New York State Council of School Superintendents** (“NYCOSS”) has a membership comprising approximately 97% of New York State superintendents of school districts, boards of cooperative educational services, and special act school districts, as well as other central office educational administrators. The Council advocates for the state’s superintendents and develops

and promotes policy on matters relating to K-12 education, school finance, and school leadership.

The **New York State Congress of Parents and Teachers, Inc.** (“NYS PTA”) is the premier association for parent involvement for all children throughout the State of New York. The NYS PTA advocates for laws that further the education, physical and mental health, welfare, and safety of children and youth, promotes the collaboration and engagement of families and educators, and advocates for adequate school funding and for fiscal responsibility regarding public tax dollars in public education funding.

The **New York State School Boards Association, Inc.** (“NYSBA”) joins in this brief to demonstrate that the issues presently before the court are of importance to all school districts and all public school students throughout New York State. NYSSBA’s membership consists of over 92% of all public school districts and boards of cooperative educational services in New York State.

The **Rural Schools Association** (“RSA”) is a member-driven organization that represents the interests of the small and rural school districts of New York State. The Rural Schools Association of New York State represents one third of all New York State students, who are served in nearly one half of its school districts. Their needs are being largely ignored by the state’s Foundation Aid formula.

The **Statewide School Finance Consortium (“SSFC”)** represents over 350 public school districts in Western and Central New York and in the North Country. SSFC focuses on equitable distribution of state aid, evaluating the state's Foundation Aid Formula, district budget tracking, and school funding fairness.

PRELIMINARY STATEMENT

Five years ago, after a detailed *de novo* analysis of the evidence amassed in this long-pending case, this Court held that:

Working from the premise articulated in *CFE II* that all children can succeed when given appropriate instructional, social and health services, we find—based upon the evidence of inadequate inputs, poor outputs and a causal connection to defendant's school financing system—that plaintiffs have established a constitutional violation with respect to the at-risk student population in each of the subject school districts.

Maisto v. State, 196 A.D.3d 104, 152 (2021). The Court emphasized that the at-risk students whose constitutional rights had been violated:

[C]ame from impoverished backgrounds, had disabilities, or whose primary language was one other than English. The compelling evidence demonstrated that, in order to place a sound basic education within the reach of such students, they require early interventions, more time on task and other supplemental programming, as well as support from adequate numbers of guidance counselors, social workers or other similar professionals.

Id.

Instead of crafting a remedy that would provide these students the “meaningful” educational opportunity that the Court of Appeals has held to be

their constitutional right in *Campaign for Fiscal Equity v. State*, 100 N.Y.2d 893, 908, (2003) (“*CFE II*”), Justice O’Connor issued a decision and order holding that full funding of the State’s Foundation Aid formula (“FA”) in 2023-2024 met the state’s constitutional obligation to the plaintiffs in this case. R.9, 13. Nowhere in its decision and order, however, did the lower court show any awareness of the fact that the FA was developed in 2006, was implemented in 2007, and was intended to be fully implemented by 2011. This means that the formula was 10 years old at the time of trial, was 19 years old at the time of the lower court’s decision, and is now 20 years old.

Total reliance on a 20-year-old formula that does not in any way relate to current needs of at-risk children cannot constitute a rational remedy for this case. Over the past two decades, the needs of students from poverty backgrounds have become more severe, their mental health needs have become more acute, the incidence of severe disabilities has increased, and the ubiquity of social media in children’s lives has presented new challenges for effective instruction. In short, a 20-year-old funding formula simply cannot provide a “meaningful educational opportunity” for the at-risk students whose constitutional rights were upheld in this Court’s decision.

The remedial precedent established by the Court of Appeals in *CFE II* required the state, among other things, to determine “the actual cost of providing a

sound basic education.” The State did not, however, undertake any analysis in 2021 or since then to “determine the actual cost of providing a sound basic education.” Instead, it has relied on a totally out-of-date formula to meet its current constitutional obligations, and the Court below unreasonably accepted this position.

Amici disagree both with the Respondent’s position and with Appellants’ narrow focus on amending the deficiencies in the “successful schools” methodology that informs the 20-year-old FA. As “friends of the Court,” *amici* respectfully submit that the proper remedy in this case is for the State to “determine the actual cost” of providing a sound basic education to all students and to develop and implement a new formula based on current needs and current data. In its initial response to the *CFE* order and in all the years since, the legislature has determined school funding formulas must be calculated on a state-wide basis, but if undertaken in accordance with applicable constitutional requirements, a new state-wide FA will meet the needs of the at-risk students in the Appellants’ districts, as well as other students throughout the state.

ARGUMENT

I. The Trial Court’s Remedy Must Be Reversed Because a Twenty-Year-Old Foundation Aid Formula, Even If Fully Funded, Cannot Meet Current Student Needs

A. The Trial Court’s Decision Rested on an Erroneous Understanding of the Foundation Aid Formula

Foundation Aid is a statutory remedy. It was the instrument the legislature chose two decades ago to satisfy the constitutional obligations the Court of Appeals identified in *CFE II*. However, a statutory remedy can satisfy the underlying constitutional obligation only as long as it actually works. The trial court treated the question of whether the formula has been fully funded as dispositive and ignored the critical separate question of whether the 2006 formula fairly and rationally reflects “the actual cost of providing a sound basic education” today. *CFE II* at 930. Those are different questions with different legal predicates.

At no point during the remedial proceedings under review in this appeal did Justice O’Connor consider whether the 2006 FA would or could provide adequate funding to meet the needs of the plaintiff districts. She did make a passing reference to the fact that in 2024, the legislature commissioned the Nelson A. Rockefeller Institute of Government (“the Institute”) “to evaluate and assess FA and its components and make recommendations to the Executive and the Legislature.” R.16. However, she took no heed of the Institute’s bold conclusion that:

[T]here is no doubt that the Foundation Aid formula needs to change from its current state. It uses old, outdated information that does not reflect today’s student population. It uses outmoded modeling to measure pupil needs and local school district wealth. And it reflects an antiquated concept of what public school districts are expected to do, how student success is defined, and how that achievement is measured.

Rockefeller Institute of Government, A Review of New York State’s Foundation Aid Formula With Recommendations for Its Improvement 9-10 (Dec. 2024) (“The Rockefeller Institute Report”).

Moreover, although Justice O’Connor opined that authorizing this study “demonstrates a commitment by the State to continue to assess and take steps to identify any changes to FA that would be dictated by the state of our schools and the funding of the education being provided to the students,” R.16-17, she did not analyze any of the report’s 30 specific recommendations, nor did she investigate whether and to what extent the State took any steps to actually adopt the Institute’s recommendations.¹

Justice O’Connor also erroneously believed that full funding of the FA was “the remedy put in place to address the constitutional violation found by the Appellate Division, Third Department.” R.13. That clearly was not the case. Full funding resulted from the State’s compliance with the terms of a settlement in *New Yorkers for Students’ Educational Rights (NYSER) v. State of New York*, N.Y. County Index No: 100274/2013, a case that had challenged these funding reductions. *See*, e-file Document No. 471, Nov. 23, 2021 (Stipulation of

¹ In fact, to date, the State has continued to implement the out-of-date 2006 FA and has modified the formula in accordance with only a handful of the report’s many recommendations. *See* discussion, *infra*, at pp. 14-18.

Settlement, and Order); e-file Document No. 473, July 20, 2023 (Order of Dismissal). There is no evidence that, in approving this settlement agreement, the attorney general, the governor, or the legislature considered that it had any relationship to a possible remedy in this case.

The trial court also stated that this Court in its 2021 *Maisto* decision had “*focused* on the failure to fully fund FA and the cuts made to the funding mechanism,” R. 13, (emphasis added), implying that full funding would overcome all the extensive deficiencies that this Court’s decision had identified in the eight districts. But that is not what this Court actually said in its decision. Certainly, the impact of the cuts in FA was noted. For example,

With respect to causation, the record reveals that Newburgh did not receive a total of over \$238.9 million in state aid as a result of the failure to phase in Foundation Aid as planned and the implementation of the GEA. Sounding a common theme, Padilla and Forgit explained that they would use additional funding to remedy the described deficiencies.

Maisto, 196 A.D.3d at 137.

Obviously, the superintendents of the *Maisto* districts would use the additional FA amounts they were owed to provide additional services to their at-risk students; however, these superintendents did not say that the availability of the owed funds would be sufficient to solve all of their funding problems, and this Court certainly never issued any holding to that effect.

B. The Rockefeller Institute Report, the State's Own Commissioned Evidence, Confirms That the Formula Is No Longer Constitutionally Adequate

By recommending the commissioning of the Rockefeller Institute study, the governor herself implicitly acknowledged that the FA was out of date and required reconsideration. The legislature's charge to the Institute called upon it to "evaluate each current component of the foundation aid formula and recommend whether to retain, modify, or eliminate the component," Rockefeller Institute report at 239-240 ¶4. Inexplicably, however, the Institute was specifically prohibited from "establish[ing] the constitutional minimum cost to provide an opportunity for a sound basic education." *Id.* at ¶2.

Prohibiting the Institute from integrating its many significant findings and proposing "the constitutional minimum" *CFE III*, 8 N.Y.3d at 27, precluded the study from providing the legislature the tools it would need to "determine the actual costs" of providing a sound basic education, *CFE II*, 100 N.Y.2d at 930. The Institute's inability to consider the interplay of the numerous discrete revisions it was recommending and the extent to which changes in certain components might offset or distort changes wrought by other elements meant that the legislature would not be able to construct a coherent formula that could deal with the many glaring deficiencies the Institute had identified in the old, out-of-date formula. Furthermore, a legislative decision to adopt only a small, random selection of the

Institute's proposed changes without any consideration of how they would interact with each other would inevitably lead to inequities and distortions in how the resulting modified formula would affect the various districts. The Institute itself was aware of this danger:

[M]any of the recommendations in this report are developed and priced-out in isolation from each other. In most cases, each component of the Foundation Aid formula is examined for improvement opportunities on its own, and an impact is measured as if only that element is changed. It is recognized, of course, that elements in the Foundation Aid formula, at the very least, interact with each other and sometimes even may be fully dependent on one another. There also is no way to know which recommendations state policymakers might eventually approve and enact, or how districts may behave after having been given revised options, so there is simply no practical and reliable way to predict the final outcome of the reform proposals or to calculate every permutation of their collective impact.

Rockefeller Institute study at 10.

The danger of incoherence that the Institute itself foresaw did, in fact, come to pass. The study made 30 specific recommendations for revising and improving virtually every aspect of the outdated formula. *Id.* at 189-225. In its 2025-2026 state aid budget, the legislature agreed to adopt part of the Institute's recommendation to update the method for calculating the number of poverty students that had still been based on the 2000 census, partially modified two other elements, and ignored the other 26 specific recommendations that the Institute had made. New York State Education Department, 2025-2026 State Aid Handbook, p. 5, available at

https://stateaid.nysed.gov/publications/handbooks/Handbook_2526.pdf.

Inexplicably, the legislature also updated only for Westchester County the Regional Cost Index (“RCI”) that had been calculated in 2006, *id.*, even though the Institute had proposed a new method for calculating relative costs of living that would accurately reflect current costs in all of the State’s 62 counties. Rockefeller Institute Report at 194.

The result of this *ad hoc* legislative response to the Institute’s report was predictable. Some school districts gained additional funding because of the change in the poverty counts, but other districts that were negatively impacted by this change simply lost out. Some of these losses might have been offset had the legislature adopted a new state-wide Regional Cost Index, or other changes recommended by the Institute, as part of an overhaul of the formula, but no such comprehensive reconsideration of the 2006 FA was done.

The haphazard impact of the changes that were adopted was well illustrated by the impact of the 2025-2026 budget on the *Maisto* districts. Four of the *Maisto* Districts (Kingston, Mt. Vernon, Newburgh, and Poughkeepsie) received only the across-the-board 2% minimum FA increase for that year, while each of the other four *Maisto* districts received increases near or above the 5.7% statewide average. New York State Division of the Budget, 2025-26 State Aid Projections, available at <https://www.budget.ny.gov/pubs/archive/fy26/en/2025-26-enacted-schoolaid->

runs.pdf. No analysis of the actual or relative needs of the *Maisto* districts—or any other districts—that might explain or justify these glaring disparities was undertaken by the legislature or any state agency.

For the upcoming 2026-2027 school year, the *Maisto* districts as a whole fared even worse. This year’s budget continues to omit the 26 additional Rockefeller Institute recommendations that were omitted from the previous year’s budget. As a result, all of the *Maisto* districts except Utica² received only the minimum 2% increase, well below the state-wide average FA increase of 3.89%. New York State Division of the Budget, 2026-27 State Aid Projections, available at <https://www.budget.ny.gov/pubs/archive/fy27/en/2026-27-enacted-schoolaid-runs.pdf>. Overall, the legislature did not state—and could not state—whether any of the *Maisto* districts, or any other districts in the state, were receiving the level of funding they needed to provide their schools the resources necessary for their students to receive the opportunity for a sound basic education.

Justice O’Connor’s decision explicitly praised the State’s commissioning of the Rockefeller Institute study, stating that “This action demonstrates a commitment by the State to continue to assess and take steps to identify any

²The enacted budget increased the weighting for English Learner students, but not in accordance with the methodology that the Rockefeller Institute had proposed and by an amount greater than what the Rockefeller Institute’s approach would have yielded. Utica, which has an unusually high percentage of immigrant and English learner students, especially benefitted from this change.

changes to FA that would be dictated by the state of our schools and the funding of the education being provided to the students.” R. 16-17. The Rockefeller Institute report does not, however, provide evidence of the State’s commitment to reasonably updating the FA. On the contrary, it is an acknowledgement by a research organization specifically chosen by the governor to consider the continued validity of the formula that “[T]here is no doubt that the Foundation Aid formula needs to change from its current state.” Rockefeller Institute Report at 9. A remedial order that rests in part on the existence of a study whose findings compel the opposite conclusion should not survive appellate scrutiny.

C. The 2006 Foundation Aid Formula Was Designed as a Four-Year Response to CFE II, Not as a Permanent Constitutional Remedy

FA was enacted in 2007 to comply with the Court of Appeals’ order in *CFE II* that had directed the State to “ascertain the actual cost of providing a sound basic education” and reform the financing system so that “every school” had the resources necessary to provide students a meaningful educational opportunity. *CFE II*, 100 N.Y.2d at 930. The formula was grounded in a “successful schools” cost analysis conducted by the State Education Department in 2006. It was structured to provide “the actual cost of providing a sound basic education” over a four-year phase-in period, with full implementation planned for 2011. The formula’s methodology was expected to be reassessed at that time.

The four-year time frame was based on a recommendation of the three Referees who had been appointed by the trial court to review the costing-out analysis the governor had adopted in response to the Court of Appeals' *CFE II* order:

The Referees recommended a costing-out study *every four years*, 'until it becomes clear that reforms to the State's education finance formulas have rendered such studies no longer necessary to assure all New York City students the opportunity for a sound basic education.' The studies would be designed and supervised by the Board of Regents, with an opportunity for the parties to be heard, and would incorporate both the successful schools method and the professional judgment method.

CFE v. State of New York, 29 A.D.3d 175, 182 (1st Dep't 2006.), *aff'd as modified*, 8 N.Y. 14 (2006) (emphasis added).

The Appellate Division and the Court of Appeals had vacated the Referees' report and deferred to the legislature on the specifics of the funding formula it would adopt. The governor and the legislature then adopted the 2006 FA, which provided approximately the funding levels the Referees had endorsed and included the four-year implementation recommendation.³ *See, e.g.*, New York State 2007-

³ *See also* *CFE v. State of New York*, 14 N.Y.3d 28, 32-33 (Rosenblatt, concurring.) ("CFE III"): "I join the majority in its rationale and result, but write separately to emphasize that my vote should not be construed as concluding that \$1.93 billion, as adjusted, is necessarily the proper additional budgetary amount to provide New York City schools, or that \$2.45 billion is the amount that should be budgeted statewide. These figures were determined by a commission designated by the State as reflecting the constitutional *minimum* for a sound basic education...That does not mean that the State is limited to the minimum, or "floor," of what it takes to provide a sound basic education. Judging by...indications that Governor-elect Spitzer will continue in a direction higher than the minimum, there is every indication that the amounts

2008 Executive Budget Briefing Book 34 (2007), available at [https://www.budget.ny.gov/pubs/archive/fy0708archive/fy0708littlebook/Briefing Book.pdf](https://www.budget.ny.gov/pubs/archive/fy0708archive/fy0708littlebook/BriefingBook.pdf).

Although the State complied with the first two years of the phase-in of FA, in the wake of the 2008 recession, it first froze any further FA increases and then, beginning in 2011, substantially reduced FA by cutting education appropriations and repeatedly delaying the phase-in period primarily through an annual “gap elimination adjustment” (“GEA”) mechanism. *See* N.Y. Educ. L. § 3602.17. It was not until 2023 that the formula that had been expected to be fully in place in 2011 was finally fully funded. This lengthy delay caused the formula to be totally out of date by the time it was fully funded, twelve years late.

FA has four basic components:

- a. A base amount per pupil reflecting the cost to educate students, as determined by the amount spent by successful school districts;
- b. A regional cost index to ensure a dollar of state aid can buy a comparable level of goods and services around the state;
- c. An expected minimum contribution by the local community; and
- d. A pupil need index recognizing added costs for providing extra time and extra help for students with special circumstances.

Educ. Law § 3602.4

dedicated will be well above the constitutional floor. When it comes to educating its children, New York State will not likely content itself with the minimum.”

The statute itself implies that there should be periodic reconsiderations of the formula to ensure that FA continues to represent the current “actual cost of providing a sound basic education.” See Educ. Law § 3602.4(a)(1) (“the foundation amount shall be adjusted annually to reflect the percentage increase in the consumer price index”). New York State Education Department also recognized the need for periodic updating: “a statistical analysis of the costs of general education in successful school districts... is *periodically updated*.” State Aid Handbooks for 2021-22, 2022-23, 2023-24, R.149, R.233, R.316) (emphasis added).

The Court of Appeals in *CFE II* emphasized that state education aid must be needs-based. *See, e.g.*, 100 N.Y.2d at 929 (“inputs should be calibrated to student need and hence ...state aid should increase where need is high and local ability to pay is low”). To be “needs-based,” a funding formula must periodically recalibrate its calculations to account for relative shifts in needs among the various school districts. Perpetuation of a 20-year-old formula cannot do this.

The Rockefeller Institute report found that “The ‘Successful School Districts’ calculation was updated for 2010-11, then again for 2013-14, but has not been updated since.” Rockefeller Institute report at 45. For a variety of reasons, the Institute considered major reform of the “successful schools” methodology a particularly “appealing avenue for reform” and proposed extensive revisions to the

existing methodology, *Id.* at 162. None of these reforms have been proposed by the governor or adopted by the legislature. As discussed above, the Institute also found that each of the other components of the formula was either “out of date,” *id.* at 184, “flawed” *id.* at 185, “skewed”, *id.* at 186, or “unnecessarily complex—many components rely on outdated data elements and pose challenges to predictability and equitable treatment among school districts” *id.* at 201.

The 2006 FA should have been reconsidered and revised in or about 2011. Development of a new analysis of the current needs-based “actual cost” of providing a sound basic education is now 15 years late. It is not possible to “determine the actual costs” of providing students in the plaintiff districts the opportunity to receive a sound basic education by continuing to rely on this woefully outdated formula. The only way to cure the constitutional violation found by this Court is to update the formula now.

II. The State’s Reliance on the Outdated 2006 Foundation Aid Formula As a Remedy for the Violations Found in This Case Is Not Rational

A. The State Itself Acknowledged Its Specific Obligations for Achieving Constitutional Compliance but Then Failed to Perform Them

In *CFE II*, the Court of Appeals established three cumulative obligations for remedying violations of the Education Article. The State must “ascertain the actual cost of providing a sound basic education;” then, “it must develop an equitable funding formula that can provide every school the resources necessary for

providing the opportunity for a sound basic education;” and finally, it needs to ensure that those reforms include “a system of accountability to measure whether the reforms actually provide the opportunity for a sound basic education.” *Id.*, 100 N.Y.2d at 930. These are not alternative paths to compliance. Each is independently required, and the first is a predicate for the other two. A remedy not grounded in an ascertainment of current actual costs satisfies none of the obligations because it produces an abstract number rather than an assurance of constitutional compliance.

The respondents themselves explicitly acknowledged that the procedures outlined in *CFE II* constitute the appropriate remedial response to this Court’s 2021 order:

This Court held that between 2006-2007 and 2013-2014, the State had violated the Education Article by failing to fund plaintiffs’ school districts at levels necessary to provide at-risk students with the opportunity for a sound basic education. Maisto, 196 A.D.3d at 152-53. *This holding triggered an obligation on the State’s part to “ascertain the actual cost of providing a sound basic education” to the at-risk students in plaintiffs’ school districts*, initiate reforms to align funding with that determination, and ensure that the reforms included a “system of accountability” to measure their effect. *CFE II*, 100 N.Y.2d at 930.

Resp. Opp Br. at 23. (emphasis added.)

Yet despite conceding that this Court’s order required it to undertake an up-to-date analysis of the actual cost of a sound basic education, especially for at-risk students, the State never undertook any such analysis and never developed a new

equitable formula nor an accountability system that could assure any additional funds were used efficiently. Instead, the State relied on the old 2006 FA that had not been designed to address the specific needs of at-risk students identified in this Court’s 2021 decision.

This Court’s 2021 remedial order stated that “It is up to [defendant] to craft an appropriate response, subject to judicial review” *Maisto*, 196 A.D.3d at 153, citing *Aristy-Farer v State of New York*, 29 N.Y.3d at 515). In responding to this order, however, the State did not revise the 2006 FA or create a new formula to ensure that the schools in the *Maisto* districts would have sufficient resources to meet the needs of their at-risk students. Instead, it has continued to rely on a formula developed 20 years ago, before the specific programs this Court identified as necessary to meet the current needs of at-risk students had been created or widely put into effect. [See, e.g., this Court’s findings regarding Academic Intervention Services (“AIS”, 196 A.D.3d at 1020), computers and modern software (*id.* at 132-133), reading specialists (*id.* at 131), Response to Intervention (“RTI”) and co-teaching models for special education students (*id.* at 126), and programs for immigrants and homeless students (*id.* at 148)]. Nor had the 2006 successful schools model considered the standards for appropriate ratios of teachers, social workers, guidance counselors and other specialized staff to numbers of at-risk students that this Court repeatedly indicated should be

considered in meeting the needs of at-risk students. *See, e.g., id.* at 120-121, 124-125.

The Court of Appeals in *CFE III* held that the court's role is "to determine whether the State's proposed calculation of that cost is rational." *Campaign for Fiscal Equity, Inc. v. State of New York*, 8 N.Y.3d 14, 27 (2006). That standard presupposes that the State has proposed a remedy that includes a calculation of educational costs that is grounded in current data. Because the State did not perform its requisite remedial obligations for determining the actual cost of providing a sound basic education and because full funding of the 2006 FA was not designed or intended to constitute a remedy for the constitutional violations identified in this case, continued use of the outdated 2006 FA cannot be considered a rational response to this Court's order.

B. A Formula Untethered From Current Educational Costs Is Intrinsically Irrational

Justice O'Connor held that because the Court of Appeals found the successful schools methodology rational in its 2006 *CFE III* decision, the State's continued reliance on that 20-year-old methodology is likewise rational. R.14. That reasoning has no stopping point. Carried to its logical conclusion, it would permit the State to satisfy its constitutional obligations in perpetuity by funding a formula approved at any prior point in time, regardless of how much conditions have changed. The trial court's logic also means that the extensive deficiencies the

Rockefeller Institute explicitly identified in the successful schools methodology need never be corrected.⁴ The Court of Appeals in *CFE III* could not have intended any such result.

The cost estimate the Court approved in *CFE III* was a contemporaneous determination—one grounded in data current at the time of review: “The State estimated this cost to include a minimum of \$1.93 billion, *in 2004 dollars*, in additional annual operating funds.” 8 N.Y.3d at 19 (emphasis added). The Court of Appeals referred repeatedly to the need for contemporaneous data: “[The trial] court should have proceeded to determine whether the state plan, *as of July 30, 2004*, incorporated that sound basic education expenditure in its proposed budget and would, if enacted, ensure a system of accountability.” *Id.* at 28. The Court’s approval was explicitly conditioned on the estimate being “adjusted with reference to the latest version of the GCEI and inflation since 2004.” *Id.* at 27.⁵ *See also*, *CFE I*, 86 N.Y.2d at 316 (“If the physical facilities and pedagogical services and

⁴ The Rockefeller Institute stated that “*an alternative to the academic outcome data used in the current [successful schools] model must be found*. With the elimination of the requirement that all high schools offer Regents exams... a statewide standardized measure of academic achievement—or ‘success’—is lacking... Second, a revised definition of ‘success’ for data calculations is warranted. The previous [successful schools] approach fixed the performance threshold as an 80 percent student pass rate on both elementary- and high school-level assessments. Such a standard today would unnecessarily restrict the number of school districts able to be included in an SSD model and would present challenges and complications for the model any time the state’s learning standards are revised.” Rockefeller Institute report at 162 (emphasis added.)

⁵ The 2006 Geographic Cost of Education Index (GCEI) to which the Court was referring is still the basis for the Regional Cost of Living Index (RCI) that is still being used 20 years later in the current outdated foundation aid formula. *See* discussion, *supra* at p.16.

resources made available *under the present system* are adequate to provide children with the opportunity to obtain these essential skills, the State will have satisfied its constitutional obligation.”).

C. Judicial Deference Does Not Obviate the Legislature’s Affirmative Duty to Ensure That All Children Are Provided a Meaningful Opportunity for a Sound Basic Education

CFE III held that: “The role of the courts is not ... to determine the best way to calculate the cost of a sound basic education in New York City schools, but to determine whether the State’s proposed calculation of that cost is rational.” 8 N.Y.3d at 27. That formulation presupposes that the State has developed a remedial proposal that the court can review. In *CFE III*, the Court noted that “There is substantial record support for...[the State’s] determination of the cost of providing a sound basic education.....” *Id.* at 30. Here, there is no record support whatsoever for the continued use of the 2006 FA. Deference is owed to a legislative or executive decision after the political branches have acted. It is not a doctrine that obliges the courts to defer to inaction or to review favorably the current applicability of a 20-year-old formula.

The Court of Appeals has also been clear that deference has limits because “it is the province of the Judicial branch to define, and safeguard, rights provided by the New York State Constitution, and order redress for violation of them.” *CFE II*, 100 N.Y.2d at 925; *CFE III*, 8 N.Y.3d at 28. Judicial deference to the

legislature's chosen remedy is appropriate when the remedy is rationally connected to the constitutional obligation it is designed to satisfy. When the connection between remedy and obligation has been severed by the passage of time, continued deference does not respect the separation of powers. It abdicates the judicial role that *CFE II* and *CFE III* together defined.

III. The Appropriate Remedy Is a Declaratory Judgment and an Injunction Requiring the State to Determine the Actual Cost of a Sound Basic Education Based on Current Needs and Current Data and Develop and Implement a Foundation Aid Formula That Will Provide an Opportunity for a Sound Basic Education to All Students

A. An Up-To-Date Cost Analysis Must be Done on a Statewide Basis

Although in *CFE* the locus of the evidence adduced at trial and the subject of the Court's liability finding involved only New York City, the Court of Appeals made clear that the constitutional right to the opportunity for a sound basic education applied to *all* students throughout the State of New York. *See CFE II*, 100 N.Y.2d (N.Y. Const. Art. XI obligates the State "constitutionally to ensure the availability of a "sound basic education" to all its children," citing *CFE I*, 86 N.Y.2d at 314.) In its remedial order, however, the Court of Appeals limited the formula changes it was mandating to apply only to New York City. *Id.* at 928. In crafting the actual remedy, however, the governor, the legislature, and the State Education Department determined that it made no equitable, administrative, or political sense to develop a new funding system for one part of the state and ignore

the similar needs of students in other parts of the State. Accordingly, in response to *CFE III*, the State enacted the Budget and Reform Act of 2007, increasing funding to schools on a statewide basis through the 2006 FA. *See Maisto v. State*, 154 A.D.3d 1248, 1249 n.1 (3d Dep’t 2017).

The rationale for undertaking a cost study and developing a new Foundation Aid formula on a statewide basis applies also to the remedy at issue in the present appeal. This Court confirmed that understanding in its 2023 decision regarding the trial court’s procedures for considering a remedy in this case:

Contrary to plaintiffs' suggestion, it is not impossible to evaluate the rationality of a financial remedy without an itemized understanding of the needs of the subject districts. This is illustrated in the *CFE* cases. As previously noted, although the adequacy of the funding proposed for schools outside of New York City was not at issue in the *CFE* cases, the costing-out of a sound basic education was undertaken on a statewide basis following *CFE II* (*see* L 2007, ch 57).

* * *

Like the costing-out of a sound basic education, reforms to defendant's system of financing school funding and managing schools have also been undertaken on a statewide basis (*see* L 2007, ch 57), and these reforms, including the enactment of Foundation Aid, have created a context that is markedly different than that of the *CFE* cases—one that is necessary to take into account.

Maisto v. State, 221 A.D.3d 1141, 1144-1145 (3d Dep’t 2023).

The trial court was correct, therefore, in holding that “the fact that the State committed to assessing FA and its components for the entire state and not just the

Maisto school districts, does not indicate that the State is ignoring its responsibility to put a remedy in place to address the constitutional violations found by the Appellate Division.” R.17. A revised statewide Foundation Aid formula can provide effective relief for the Appellants—if it is updated to fully consider the needs of at-risk students as described by this Court in its 2021 decision, and if the revision is revised based on current data regarding the resources necessary to meet those needs.

B. This Court Should Issue an Appropriate Declaratory Judgment and Injunctive Order

This case has now gone on for 15 years. At this point, Appellants are entitled to a prompt, effective remedy for the constitutional violations they are continuing to suffer. There is no need to remand this matter again to the trial court for further remedial procedures. This Court has the power and the responsibility to issue the kind of order the Court of Appeals issued in *CFE II*, which brought an end to that long-pending litigation. There, the Court of Appeals did not remand the matter to the trial court to fashion a remedy. It stated what the Constitution required and directed the State to satisfy those requirements within a definitive timeframe. *See id.* at 930. This Court should do the same.

Specifically, *amici curiae* recommend that this Court issue a judgment and order:

1. Reversing the decision below;
2. Declaring that the State has not defined and implemented an appropriate remedy to respond to the constitutional violations found by this Court in *Maisto v. State*, 196 N.Y.3d 104 (3rd Dep't 2021.);
3. Requiring the State within one year from the date of this order to a) determine, based on current data, the actual cost of providing all students in the state a sound basic education, including the resources necessary to provide the opportunity for a sound basic education to at-risk students; b) develop an equitable formula that ensures all schools, including schools with large numbers of at-risk students, have sufficient resources to provide the opportunity for a sound basic education; and c) ensure a system of accountability to measure whether the reforms actually provide the opportunity for a sound basic education.

Such a remedy would be consistent with separation of powers requirements and would properly defer to the legislature's budget-making prerogatives. As in *CFE*, the Court here would be prescribing appropriate parameters for the state to fulfill its constitutional responsibilities but would not be directing the political branches to utilize any specific costing out methodology, develop any particular type of funding formula, or expend any specified dollar amount. Nor would the

state be precluded from considering cost-effective educational approaches in its cost analysis. The only prescription the Court would be imposing on the State would be a ban on continuing to discharge a present-day constitutional obligation with a 20-year-old cost determination.

CONCLUSION

For all the aforesaid reasons, *amici curiae* respectfully request that this Court reverse the decision of the court below and issue a decision that requires the State to revise the 2006 Foundation Aid formula or develop a new formula to ensure sufficient funding for all students, including at-risk students, to have a meaningful opportunity for a sound basic education.

Respectfully submitted,

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