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# In Supreme Court

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Alejandro Cruz-Guzman,  
as guardian and next friend of his minor children, *et al.*,

*Appellants,*

vs.

State of Minnesota, *et al.*

*Defendants/Respondents,*

and

Higher Ground Academy, *et al.*

*Intervenors/Respondents.*

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**BRIEF OF *AMICI CURIAE***  
**ED-ALLIES, NORTHSIDE ACHIEVEMENT ZONE,**  
**PROJECT RESTORE MN, NATIONAL PARENTS UNION,**  
**COALITION OF ASIAN AMERICAN LEADERS,**  
**GREAT MN SCHOOLS, VOICES FOR RACIAL JUSTICE, AND**  
**MARQUITA STEPHENS**

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## **INTRODUCTION AND STATEMENT OF INTEREST**<sup>1</sup>

*Amici*—a group of eight discrete organizations and individuals—have a unified message: racial demographics, without consideration of educational access or quality, should not be the exclusive measure of an “adequate” education under the Education Clause. A school that serves predominantly—or even entirely—students of color is not inherently “inadequate.” A rule that provides otherwise carries with it the same abhorrent message underlying the laws that *Brown* invalidated: some groups are better than others such that the adequacy of education is determined by their mere presence. That message takes Minnesota backward.

*Amici* are also profoundly concerned that using race as the proxy to measure educational adequacy marginalizes the tangible and intangible benefits that culturally affirming schools have for students of color and would strip away underserved families’ hard-won power to select schools that meet those students’ academic, ethnic, linguistic, and cultural needs. Such a rule would take Minnesota the wrong way in seeking to close the state’s educational opportunity and achievement gaps. Many families of color intentionally choose schools that—like historically Black colleges and universities—create both an academically rigorous and culturally affirming learning environment for their children. Those important personal choices cannot be unconstitutional, particularly if the

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<sup>1</sup> Pursuant to Rule 129.03, counsel for *amici* authored this brief in its entirety. No other counsel—including counsel for the parties—participated in the drafting. In addition, no person or entity other than *amici* made a monetary contribution to the preparation or submission of this brief.

schools demonstrate strong academic outcomes and meet the needs of historically underserved communities.

The rule Appellants propose would restrict access to Minnesota schools that dynamically serve students of color, would disproportionately limit those students' freedoms, and would put the burdens of "integration" or "balancing" squarely on those students. *Amici* have a public interest in assuring that Minnesota moves forward with positive educational environments that support students' cultural, ethnic, academic, and linguistic needs while protecting parents' agency to choose schools that meet their children's individual needs.

#### **I. Ed-Allies.**

Ed-Allies is a Minnesota-based education advocacy nonprofit committed to the belief that all Minnesota students deserve an excellent education regardless of race, ethnicity, or socio-economic status. Ed-Allies partners with other education, civic, and philanthropic leaders to advocate for education policies and legislation throughout Minnesota that puts underserved students first, removes barriers to implementing successful programs, and fosters an inclusive conversation about what is possible for students.

#### **II. Northside Achievement Zone.**

Northside Achievement Zone ("NAZ") is a Minnesota-based nonprofit whose mission is to close the achievement gap and end generational poverty in North Minneapolis. NAZ collaborates with parents, schools, and community organizations to

build a culture of achievement where all children are successful and have support and resources to reach their full academic potential.

### **III. Project Restore MN.**

Project Restore MN is a youth-founded and youth-led Minnesota non-profit organization whose mission is providing services to American Descendants of Slavery (“ADOS”) organizations, communities, and youth throughout the state. Project Restore MN believes that, through partnerships and community outreach and engagement, it can change the narrative of the past 400 years. Project Restore MN also provides valuable tutoring and mentorship to youth.

### **IV. National Parents Union.**

National Parents Union (“NPU”) is a network of highly effective parent organizations and grassroots activists across the country that is united behind a set of common goals and principles that empower parents. NPU’s mission is to support and empower parents who have lived experiences and are authentic voices, advocates, and organizers. NPU brings together an intersectional group of families from all 50 states, Washington D.C., and Puerto Rico, providing a space for parents of color, low-income parents, parents of children with special needs, LGBTQAI parents, single parents, grandparents, and formerly incarcerated parents to join a vibrant coalition with other traditionally under-represented voices and help define the education conversation throughout the country.



## **V. Coalition of Asian American Leaders.**

The Coalition of Asian American Leaders (“CAAL”) is a Minnesota non-profit organization that provides a supportive network to equip and uplift community and business leaders and develop and act on shared agendas. CAAL’s initiatives include creating family- and student-centered agendas that integrate policy, community mobilization, and research strategies to improve how school districts value who young people are, build curriculum and support what is culturally relevant, and improve school accountability to parents and students. CAAL strives to develop a more culturally responsive school system that, among many other things, utilizes heritage and home language to support academic excellence.

## **VI. Great MN Schools.**

Great MN Schools is a non-profit dedicated to ensuring all children attend excellent and equitable schools. The organization works with community partners to help underserved families navigate the state’s K-12 school systems. It provides resources to empower families to make informed school choices—including holistic and transparent information on school quality—and to effectively advocate for their children within schools. Great MN Schools is committed to supporting schools in their efforts to provide students with engaging, high-quality learning experiences, anchored in grade-appropriate curriculum and instruction.

## **VII. Voices for Racial Justice.**

Voices for Racial Justice (“VRJ”) was founded in 1993. VRJ is a Minnesota organization comprised of leaders, organizers, and culture workers who collectively

envision a world without racism and that honors the culture, knowledge, power, and healing of Black, Indigenous, and communities of color. VRJ believes in building education equity, with parents and youth at the center of solution making.

### **VIII. Marquita Stephens.**

Marquita Stephens serves as interim CEO of the Urban League Twin Cities (“ULTC”), where she previously served as VP, Strategic Engagement and Chief Strategy Officer. Originally from Pittsburgh, Ms. Stephens has been in the Twin Cities since 1999 working on behalf of children and families. Ms. Stephens formerly served as President and CEO of the African American Adoption Agency and was Community Engagement Lead for Roseville Area School District’s 21st Century grant.

During her tenure at the ULTC, Ms. Stephens developed a Parent Academy and Summer STEAM program, and deepened the Minneapolis version of the National Urban League’s Project Ready as Black Gems. She co-authored with Department of Education and Minneapolis Public Schools an Equity Framework advocating the balance of power within stakeholders to bring forth the best possible system of education for K-12 students. These programs address micro and macro level change to benefit and advance equity considerations on behalf of Black people. Ms. Stephens is now charged with developing the Center for the Advancement of the Black Family. In her previous work, Ms. Stephens helped develop and served as the facilitator for the Community Conversations of the City of Roseville arising after the shooting of Philando Castile, tackling difficult subjects like police/community relations and immigration reform.

## ARGUMENT

The legal issue presented is whether the existence of a “racial imbalance” in a school’s student body is a *per se* violation of the Education Clause in the Minnesota Constitution, irrespective of whether the imbalance is caused by intentional, *de jure* segregation. *Amici* urge the Court to hold in the negative because measuring a school’s adequacy requires a more holistic approach, taking into account and recognizing why families of color *choose* to send their children to certain institutions and the challenges students of color face in racially “balanced” schools.

The Education Clause requires the state Legislature to establish “a general and uniform system of public schools.” Minn. Const. art. XIII, § 1. The Education Clause—like the Equal Protection Clause—unquestionably prohibits the state from *intentionally* segregating public schools. This Court would undoubtedly strike down policies that systematically deny certain students full access to resources and opportunities based on race.

*Amici* strongly believe, however, that students of color, low-income students, students with disabilities, and students from historically underserved communities are entitled to have access to high quality and culturally engaging schools. When families affirmatively choose school settings where their children will have access to culturally affirming environments and programming, it is wrong to brand those schools as “inadequate” based only on their racial makeup. Focusing on racial demographics to determine educational adequacy—and to conclude, implicitly at least, that a school that is not “white enough” violates the Constitution—would substantially damage students of

color by removing invaluable educational assets like culturally affirming schools where parents *choose* to enroll their children.

These schools offer unique programming centered around students’ cultural, linguistic, and ethnic backgrounds. When parents proactively exercise their agency and *choose* these schools—it is the exact *opposite* of the pernicious, state-sponsored *elimination* of parent agency that *Brown* proscribed. The fact that the state has an educational system that gives families room to exercise that agency—equally—is a general, uniform system consistent with the Education Clause. And it is a far more equitable system than the traditional one where residential-housing location alone determines educational opportunities.

**I. Intentional (*de jure*) segregation is far different than individual parental choice.**

*Brown* addressed laws in Kansas, South Carolina, Virginia, and Delaware that intentionally segregated state public schools based on race.<sup>2</sup> In two of the state cases (Kansas and South Carolina), courts made findings that the separate schools were substantially equal with respect to tangible factors like buildings, curricula, teacher qualifications, and transportation. *Brown*, 347 U.S. at 492; *see also id.* at 486 n.1

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<sup>2</sup> The four states’ segregation laws were similar, though not identical. South Carolina, Virginia, and Delaware had constitutional provisions and statutory laws that *required* “segregation of Negroes and whites in public schools.” *Brown v. Bd. of Educ. of Topeka, Shawnee Cty., Kan.*, 347 U.S. 483, 486 n.1 (1954). Kansas, by contrast, had a statute permitting—but not requiring—cities with populations over 15,000 to “maintain separate school facilities for Negro and white students.” *Id.* Under that authority, the “Topeka Board of Education elected to establish segregated elementary schools.” *Id.*

(describing findings). The Supreme Court accepted these findings but still held the segregation laws were unconstitutional.

The Court's unanimous decision is replete with concerns over the intangible, psychological effects of intentional, state-sponsored segregation. The Supreme Court quoted extensively from a Kansas district court decision, which determined that the detrimental effects of segregation on students of color were at their height when segregation “has the sanction of law.” *Id.* at 494. This is because “separating the races is usually interpreted as denoting the inferiority” of persons of color. *Id.* Moreover, “[a] sense of inferiority affects the motivation of a child to learn.” *Id.* Thus, the Court held, irrespective of (what appeared to be) equal tangible measures, “[s]eparate educational facilities are inherently unequal” and deny students of color “equal protection of the laws guaranteed by the Fourteenth Amendment.” *Id.*

Against this backdrop, it is no wonder this Court, in a footnote citing to *Brown*, recognized that “[i]t is self-evident that a segregated system of public schools is not ‘general,’ ‘uniform,’ ‘thorough,’ or ‘efficient.’” *Cruz-Guzman v. State*, 916 N.W.2d 1, 10 n.6 (Minn. 2018). When the *state* declares that an entire group of students cannot attend certain schools because of their race, the result is necessarily a pernicious, bisected, nonuniform education system, contrary to the constitutional mandates of the Education Clause (and Equal Protection Clause). *See id.* at 825 (observing that the United States Supreme Court uses the phrase “*de jure* segregation” to describe “the practice ‘of maintaining *two sets of schools* in a single school system” pursuant to a “governmental

policy to separate pupils in schools solely on the basis of race.” (quoting *Swann v. Charlotte-Mecklenberg Bd. of Educ.*, 402 U.S. 1, 5-6 (1971)).

This case, however, is different. It looks beyond opportunities denied students of color through state policy or practice and, instead, looks at racial “imbalance” created by affirmative parent choices. Unlike the situations in *Brown*, many Minnesotan families (for reasons discussed below) are exercising independent agency and *choosing* to enroll their children in culturally affirming schools. These schools—proactively selected by families of color (not forced upon them)—differ from state-sanctioned racial segregation. The former protects and enhances parents’ independent agency to make important educational decisions concerning their children; the latter destroys it.

This simple (but important) point that *de jure* segregation is pernicious while independent choice is invaluable was recently elucidated on the hit television show *Blackish*. Students opposing the forceful removal of students from a voluntary all-Black dormitory explained:

Having separate houses is not segregation; it is congregation. We are choosing to have our own dorms the same way some female students choose to go to Smith or Wellesley or Barnard or how some Black students choose to go to Clark or Morehouse or Howard. *The point is, when people come together on purpose, it’s different than when people are forced into separation. That coming together equals culture, empowerment, comfort, unity . . . all the qualities that make us proud to be [part of the college].*<sup>3</sup>

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<sup>3</sup> *Blackish*, “Liberal Arts,” Season 3, Ep. 23.

As *Brown* explained, *de jure* segregation is unconstitutional because the *state* determines based on race who can attend what school. But when families exercise their agency and enroll their children in schools that enhance their sense of belonging and provide culturally affirming services, those personal decisions are not unconstitutional. *Freeman v. Pitts*, 503 U.S. 467, 495 (1995) (“Where resegregation is a product not of state action but of private choices, it does not have constitutional implications.”).

Indeed, in the decades since the Supreme Court decided *Brown*, the Court has rejected constitutional challenges based on alleged racial imbalance alone.<sup>4</sup> *See, e.g., Milliken v. Bradley*, 433 U.S. 267, 280 n.14 (1977) (“[T]he Court has consistently held that the Constitution is not violated by racial imbalance in the schools, without more.”). Therefore, “[a]n order contemplating the ‘substantive constitutional right (to a) particular degree of racial balance’” is “infirm as a matter of law.” *Id.* (quoting *Pasadena City Bd. of Educ. v. Spangler*, 427 U.S. 424, 434 (1976)) (parentheses in *Milliken*); *see also Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 736 (2007) (recognizing “distinction between segregation by state action and racial imbalance caused by other factors”); *Freeman*, 503 U.S. at 495-96.

## **II. Culturally affirming schools enhance the educational environment for many students of color.**

*Amici* are deeply concerned that a holding that endorses using purely racial demographics to measure educational “adequacy” would usher in some of the very

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<sup>4</sup> To be fair, these cases did not interpret or apply Minnesota’s Education Clause. But Appellants do not provide any evidence that the Education Clause was ever aimed at “balancing” racial populations with the schools in a particular district.

psychological effects the Supreme Court found so destructive in *Brown*. Both the underlying assumption (that certain schools are “inadequate” because of their racial makeup irrespective of the schools’ resources, academics, and programming) and the implicit remedy for that assumption (recruiting or assigning students from other racial backgrounds) send the same harmful message that led to *Brown*’s determination that state-sponsored segregation is unconstitutional: that one group is intrinsically more valuable than another.

More than that, though, using race as the sole proxy of education “adequacy” minimizes the tangible and intangible benefits culturally affirming schools have on students of color and misapprehends those students’ lived experiences in schools Appellants might consider to be “balanced.”<sup>5</sup> In many instances, families seek out culturally affirming schools to find settings where cultural and linguistic differences are celebrated, not marginalized, and where students of color aren’t seen as “others.” For example, heritage language programs attract and enrich students by helping them retain home or community languages such as Hmong or Somali.<sup>6</sup>

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<sup>5</sup> *Amici* do not suggest that all students of color have the same lived experiences. The point is simply that culturally affirming schools have substantial benefits for many students. Parents who seek those benefits for their children should enjoy the individual agency to elect to enroll their children in such programs irrespective of the racial makeup of the schools.

<sup>6</sup> See Danyika Leonard & Alex Vitrella, *Power, Politics and Preservation of Heritage Languages* (2020), available at [Heritage-Languages-Paper.pdf \(educationevolving.org\)](https://www.educationevolving.org/Heritage-Languages-Paper.pdf) (last visited Mar. 3, 2023).



One parent of a student at Prodeo Academy in Minneapolis explained these important virtues:

At Prodeo, my daughter gets to learn in a culturally affirming environment that nourishes more than her academic achievements. She is surrounded by students, teachers, and administrators that share a life experience in a way she doesn't experience anywhere else. All of her extracurricular activities, even swimming at the local YMCA, are made up of predominantly white peers. That dynamic means something – it shifts something. When she's at Prodeo, she doesn't have to carry the burden of being “other” and can just be her.<sup>7</sup>

Moreover, when asked about the consequences of taking away that important parental choice, that same parent offered this:

As conversations about whether our school should exist at the Legislature and in the chambers of the State Supreme Court, I want to make it clear that my ability to choose the best school for my child is not only my right, it's also life-changing for our family. It's not a decision that others should be able to make for our family. My daughter deserves the school she has, and if it had to change in the way that some are proposing, I don't think we would feel safe.

*Id.*

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<sup>7</sup> Iesha Marshall, *The only place my daughter doesn't feel like a minority is at her school* (Jan. 27, 2023), available at: <https://www.minnpost.com/community-voices/2023/01/the-only-place-my-daughter-doesnt-feel-like-a-minority-is-at-her-school/> (last visited Feb. 28, 2023). Prodeo has schools in Columbia Heights and St. Paul and has a website that states: “We come together to welcome, respect, collaborate, listen, and learn with each other. When we affirm the identities, background, experiences, and beliefs of classmates, families, and colleagues different from ourselves, we advance knowledge, empathy, and justice.” See <https://www.prodeoacademy.org/apps/pages/overview-2> (last visited Feb. 28, 2023).

*Brown* confirms the significance of students' sense of belonging. When students are told (explicitly or implicitly) they *don't* belong, that "sense of inferiority affects the motivation of a child to learn." *Brown*, 347 U.S. at 494. But when students receive cultural affirmance, they are told (explicitly and implicitly) they *do* belong, enhancing the learning environment.

In an informative article, DeLeon Gray, an Associate Professor of Educational Psychology at North Carolina State University, explained that "a sense of belonging at school means feeling a sense of acceptance, respect, inclusion and support in a learning environment."<sup>8</sup> Professor Gray concluded that students with a sense of belonging feel energized, spend more time on tasks, and participate in activities. But students lacking a sense of belonging struggle to devote full cognitive resources to tasks and emotional wellness problems. These students look for ways to *avoid* school (frequent trips to the school nurse, truancy, etc.). Professor Gray emphasizes a critical point:

The negative impacts of not belonging can be cyclical in the sense that you can have a negative or disconfirming experience about your identity or your place within the school and that might lead you to try to make up for that in some way, which could also lead you to do things you wouldn't otherwise do if your belonging needs were met within that educational context.<sup>9</sup>

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<sup>8</sup> Janine Bowen, *Belonging at School? 'Students Choose to be in Environments That Make Them Feel a Sense of Fit,' Says Associate Professor DeLeon Gray* (Oct. 21, 2021), available at <https://ced.ncsu.edu/news/2021/10/21/why-is-it-important-for-students-to-feel-a-sense-of-belonging-at-school-students-choose-to-be-in-environments-that-make-them-feel-a-sense-of-fit-says-associate-professor-deleon-gra/> (linking a video presentation by Professor Gray) (last visited Feb. 20, 2023).

<sup>9</sup> *Id.*

In another informative (and thorough) dissertation, Carey Dzierzak Seeley concludes:

[I]n addition to culturally relevant pedagogy and culturally sustaining pedagogy, we must seek to create culturally affirming systems in which students' cultures are valued, celebrated and affirmed through curriculum, literature, classroom dynamics and through school and community support. By creating culturally affirming systems, we can meet students' needs, listen to their voices and affirm their identities in multiple ways. In addition, this means affirming a family's needs and their insights and cultures.<sup>10</sup>

Using race as proxy to measure the “adequacy” of a school risks all of this and overtly undermines (and diminishes) the many virtues of culturally affirming schools. Moreover, it ignores significant challenges students of color face in schools that appear “balanced.”<sup>11</sup> These challenges are persistent and must be considered in assessing educational adequacy. In other words, measuring educational adequacy requires a more holistic approach, recognizing why families *choose* to send their children to certain institutions and the challenges students of color face even in “balanced” schools. As one scholar put it:

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<sup>10</sup> Carey Seeley Dzierzak, “The Case for Culturally Affirming Systems of Education: Exploring How Professional Development Impacts Culturally Relevant and Critical Literacy Teaching Practices” (2021), at 167, available at [https://digitalcommons.hamline.edu/cgi/viewcontent.cgi?article=5518&context=hse\\_all](https://digitalcommons.hamline.edu/cgi/viewcontent.cgi?article=5518&context=hse_all) (last visited Feb. 29, 2023).

<sup>11</sup> See Thandela K. Chapman, *Is Integration a Dream Deferred? Students of Color in Majority White Suburban Schools*, THE JOURNAL OF NEGRO EDUCATION, Vol. 83, No. 3 (2014), at 314 (discussing research finding “that Black students in majority White schools exhibited lower levels of self-esteem and cultural flexibility than Black students in settings where students of color were the majority population”).

[E]ducators, parents, and concerned citizens cannot continue to embrace the discourse of integrated schools as racial reform without a sharp and critical view of how integrated schools serve *and* marginalize students of color. While students of color in majority White schools have higher GPAs and rates of college attendance than their urban peers, they suffer from racial anxiety, hostile school environments, and a lack of adult support in what that can significantly affect their schooling outcomes. Although these effects may be less visible, and not measurable, the costs to students' self-esteem and academic confidence are serious.<sup>12</sup>

There are better measures of educational adequacy. These include culturally engaging programming, diverse and culturally competent educators, meaningful family engagement, high-quality assessment of students' academic outcomes, and long-term successes such as postsecondary achievement and meaningful employment. But using racial makeup as the only proxy undermines the needs of historically underserved communities and limits the pool of schools upon which they can draw.<sup>13</sup> *Amici* urge this Court to keep Minnesota on a forward path—not one that will unmistakably take us backward.

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<sup>12</sup> *Id.* at 323 (internal citations omitted) (emphasis in original).

<sup>13</sup> One recent peer-reviewed study found that “the majority of variance in achievement [about 80%] occurs *within schools*,” with a much “smaller portion that occurs *between schools*.” Michael C. Rodriguez & Kyle Nickodem, *Comprehensive Partitioning of Student Achievement Variance to Inform Equitable Policy Design* (Apr. 2018) (emphasis added), at 28, available at: <https://conservancy.umn.edu/bitstream/handle/11299/195229/2018-PartitioningVariance-NCME.pdf> (last visited Mar. 6, 2023). In other words, there are strong data reflecting that students of color are being inadequately served in integrated settings.

### III. Communities of color bear a disproportionate cost of the burdens of “balancing.”

Finally, *amici* implore the Court to recognize that the consequences of racial “balancing” are often borne by students of color. The historical reality is that white suburban students are seldom bussed into communities of color. The opposite is true: students of color are uprooted from their communities to predominantly white schools, engendering the very harms *Brown* recognized.

This is *not* just theoretical. One illustrative, real-world example occurred in Louisville, Kentucky. The county there initially instituted a school rebalancing scheme, requiring that at least 15% (but no more than 50%) of any school be made up of Black students. The Supreme Court deemed that plan unconstitutional in *Parents Involved*. Accordingly, the county adopted a “broader definition of diversity, considering not only race, but parent income and educational levels with the neighborhoods where students live.”<sup>14</sup> Those efforts, however, came at a significant cost to populations they were supposedly intended to serve: students of color. Those students had to “crisscross the county on buses, bound for far-away schools not by choice, but because they’ve been given no other option.”<sup>15</sup> Students elsewhere, “most of them white, retained their neighborhood choice.”<sup>16</sup>

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<sup>14</sup> Mandy McLaren, *Louisville’s desegregation myth: How a busing plan hurt Black communities it aimed to help*, LOUISVILLE COURIER JOURNAL (Feb. 3, 2021).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

The experience in Connecticut also illustrates this point. Initially hailed as an “integration model,” Connecticut created state-funded magnet schools but regulated admissions: at least 25% of the student body had to be white, while a maximum of 75% could be Black or Hispanic.<sup>17</sup> The reality was that most magnet schools could not attract enough white students to meet the state’s designated racial quota.<sup>18</sup> And when that happened, the schools had to “leave seats empty and turn away qualified Black and Hispanic students who would be able to attend otherwise.”<sup>19</sup> Put simply, “Connecticut’s racial quotas hurt the very children they were supposed to help.”<sup>20</sup> Connecticut certainly “succeeded in creating high-quality magnet schools,” but at significant cost. The accompanying “mandated racial quotas block[ed] deserving students from taking advantage of those opportunities—all because they’re the wrong color.”<sup>21</sup>

Even well-intended solutions that fail to engage families of color often have the most severe costs for populations they are intended to serve. Students of color (and their families) benefit when they have access to high quality, affirming educational opportunities, not when their opportunities are predetermined or limited based on

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<sup>17</sup> See Scott Barton, *Battling discrimination in Connecticut schools* (Sept. 25, 2019), available at <https://pacificlegal.org/battling-discrimination-in-connecticut-schools/> (last visited Feb. 28, 2023).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

unsupported and demeaning notions that their communities are inadequate and that they must uproot their children and enroll them in more “balanced” schools that may not meet their individual needs.

### **CONCLUSION**

When the racial makeup of a school is not the product of the State deciding who attends and who does not, but of families of color choosing schools that best meet the academic, cultural, and linguistic needs of their children, that school cannot be deemed “inadequate” based on racial makeup alone. Instead, measuring a school’s adequacy requires a more holistic approach—one that recognizes why families of color *choose* to send their children to certain institutions. The Court should answer the certified question in the negative.

Respectfully submitted,

Dated: March 6, 2023

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**CERTIFICATE OF COMPLIANCE**

I hereby certify that this document conforms to the requirements of the applicable rules, is produced with a 13-point, proportionately spaced font, and the length of this document is 4,286 words, including headings, text, and footnotes. This document was prepared using Microsoft Word 2019 software.

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