APL-2024-00099

To be argued by:
MARK S. GRUBE
20 minutes requested

State of New York
Court of Appeals

INTEGRATENYC INC., COALITION FOR EDUCATION JUSTICE, P.S. 132 PARENTS FOR CHANGE, A.C., H.D. ex rel. W.D., M.G. ex rel. M.G., L.S. ex rel. S.G., C.H. ex rel. C.H., Y.K.J. ex rel. Y.J., A.M., V.M. ex rel. J.M., R.N. ex rel. N.N., M.A. ex rel. F. P., S.S. ex rel. M.S., S.D. ex rel. S.S., K.T. ex rel. F.T., and S.W. ex rel. B.W.,

Plaintiffs-Respondents,

v.

THE STATE OF NEW YORK, KATHY HOCHUL, as Governor of the State of New York, NEW YORK STATE BOARD OF REGENTS, NEW YORK STATE EDUCATION DEPARTMENT, BETTY A. ROSA, as New York State Commissioner of Education, BILL DE BLASIO, as Mayor of New York City,

Defendants-Appellants,

(*caption continues inside front cover*)

REPLY BRIEF FOR STATE APPELLANTS

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Dated: February 28, 2025

Supreme Court, New York County, Index No. 152743/2021
First Department No. 2022-02719

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NEW YORK CITY DEPARTMENT OF EDUCATION, MEISHA PORTER,
as Chancellor of the New York City Department of Education,

Defendants-Appellants,

PARENTS DEFENDING EDUCATION,

Intervenor-Defendants-Appellants.

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PRELIMINARY STATEMENT

The State Defendants[1] share plaintiffs' aspiration that each child in New York City—indeed, in the entire State—receives the best possible public education. In fact, the policy template proposed by plaintiffs to remediate racial inequities in New York City's public school system was created by the New York State Board of Regents and the New York State Education Department, drawing on the work of numerous experts who have dedicated their careers to improving education in the State. (*See* Joint Record on Appeal (R.) 95, 191-254.) But this legal action against the State Defendants is not the proper means to achieve that shared and laudable goal.

Contrary to plaintiffs' argument, allegations of deficient educational outcomes standing alone are insufficient to state a claim under the Education Article of the New York State Constitu-

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[1] This brief is submitted on behalf of the State of New York, the Governor of the State of New York, the New York State Board of Regents, the New York State Education Department, and the New York State Commissioner of Education (together, the "State Defendants"). The Mayor of New York City, the New York City Department of Education, and the Chancellor of the New York City Department of Education (together, the "City Defendants") are separately represented.

tion. This Court has never applied the Education Article except to ensure that the State provides adequate funding for public schooling. And even if this Court were to expand the Education Article to remediate educational inadequacies that do not arise from insufficient funding, plaintiffs have still failed to allege an inadequacy attributable to the State. Instead, plaintiffs' Education Article claim seeks relief based on alleged inadequacies in the day-to-day operation of City schools, in which the State plays no role.

Plaintiffs also fail to state an equal protection claim against the State Defendants. The State has no involvement in the admissions process for gifted and talented (G&T) programs, screened schools, and all but three of the City's seven hundred high schools. With respect to those three schools, state law permissibly requires that admission be based on a standardized test. Plaintiffs fail to allege an inference of discriminatory intent sufficient to overcome the presumption of good faith afforded to the Legislature, especially as the Legislature amended the proposed statute to resolve concerns about potential disparate racial impacts.

ARGUMENT

POINT I

PLAINTIFFS FAIL TO STATE AN EDUCATION ARTICLE CLAIM AGAINST THE STATE DEFENDANTS

As an initial matter, this Court should reject plaintiffs' invitation to expand the Education Article beyond its well-established function of ensuring that the State adequately funds its public school system to provide a sound basic education to the State's children. That said, this Court need not reach the issue of whether the Education Article can be used to remedy some non-funding-related inadequacies because plaintiffs' "failure to sufficiently plead causation by the State" is independently fatal to its Education Article claim. *New York Civ. Liberties Union v. State*, 4 N.Y.3d 175, 179 (2005) ("*NYCLU*"); *see Paynter v. State*, 100 N.Y.2d 434, 441 (2003).

A plaintiff asserting a violation of the Education Article must adequately plead two elements to withstand a motion to dismiss: "the deprivation of a sound basic education, and causes attributable to the State." *NYCLU*, 4 N.Y.3d at 178-79. Plaintiffs are therefore wrong to argue that they need only plead deficient educational out-

comes to proceed to discovery on causation. *See, e.g.*, Br. for Pls.-Resp'ts (Br.) at 3-4, 24-25.

A. The Alleged Educational Inadequacies Are Not Actionable Under the Education Article Because They Are Not Attributed to Inadequate Funding.

As the State Defendants explained in their opening brief (at 28), this Court has recognized certain fundamental components of a sound basic education in *Campaign for Fiscal Equity v. State*, 86 N.Y.2d 307, 316 (1995) ("*CFE I*") and *Campaign for Fiscal Equity v. State*, 100 N.Y.2d 893, 911-14 (2003) ("*CFE II*"). This Court has also explained that the Education Article establishes a "constitutional floor" respecting funding, *Aristy-Farer v. State*, 29 N.Y.3d 501, 505 (2017) (quotation marks omitted), and "does not require equality of educational offerings throughout the state," *NYCLU*, 4 N.Y.3d at 178. This Court has rejected Education Article claims based on other purported deficiencies such as the "demographic composition" of a school district, *see Paynter*, 100 N.Y.2d at 442, and based on deficiencies that do not constitute "a district-wide failure," *NYCLU*, 4 N.Y.3d at 182.

The consistency in this Court's limited application of the Education Article to funding-related claims is amply supported by the provision's history and text. The Constitutional Convention of 1894 recognized a concern that the funding of the State's public school system "rest[ed] simply on statutory law," and was subject to the whims of the Legislature. 3 *Revised Record of the Constitutional Convention of the State of New York, May 8, 1894, to September 29, 1894* 695 (1900). To address that concern, the Education Article "deprive[d] the legislature of discretion" to establish and maintain public schools and provided the judiciary with authority to enforce the Legislature's "absolute duty to provide a general system of common schools." Charles Z. Lincoln, 3 *The Constitutional History of New York* 554 (1906). The Education Article therefore mandates that "[t]he legislature shall provide for the *maintenance* and *support* of a system of *free* common schools." N.Y. Const. art. XI, § 1 (emphasis added).

Plaintiffs fail to identify a single decision of this Court going beyond its settled role of ensuring that the State provides adequate funding to its schools. Rather, plaintiffs rely on isolated passages

from various decisions to suggest that this Court has already concluded that it would recognize such a claim (*see* Br. at 27-28). But plaintiffs' reading of those passages is mistaken. This Court has explained that neither *NYCLU, Paynter*, nor *CFE I* resolved the question of whether a plaintiff may state an Education Article claim absent allegations of deficient funding. *See NYCLU*, 4 N.Y.3d at 180 n.2.

More fundamentally, even assuming arguendo that the Education Article could recognize claims based on certain non-funding-related educational deficiencies, plaintiffs have offered no workable standard or principle of law to distinguish between those deficiencies that give rise to an Education Article claim and those that do not. Instead, plaintiffs assert that the matter is a question of fact subject to discovery and to be resolved at a later phase in proceedings. *See* Br. at 25.

To the contrary, and as the State Defendants explained in their opening brief (at 31-38), this Court routinely looks to the considerations underlying the justiciability doctrine to draw the boundaries between the judiciary's power and the powers of its coequal branches:

the precise inquiry that the Court must engage in when defining the contours of the Education Article. Applying those considerations weighs against expanding the category of claims that may be brought under the Education Article, because such claims are subject to judicial resolution.

Among other things, New York's Constitution has not committed general matters of education policy to the judiciary. Rather, this Court has recognized "the constitutional principle that districts make the basic decisions on funding and operating their own schools," *NYCLU*, 4 N.Y.3d at 182. Moreover, the absence of manageable judicial standards to supervise "[n]early every facet of the New York City public education system," (R. 15-16), weighs against expanding the scope of the Education Article beyond "the basic literacy, calculating, and verbal skills" previously recognized by this Court, *CFE I*, 86 N.Y.2d at 316, to reach the broad claim brought by plaintiffs here.

Finally, as more fully discussed below, another consideration weighs against such an expansion of the Education Article: the requirement that an Education Article claim must be based on

causes attributable to the State. *See NYCLU*, 4 N.Y.3d at 178-79. If the Court were to consider recognizing some non-funding-related deficiencies as actionable under the Education Article, it should not do so here, where the deficiencies at issue arise from local policy choices rather than state action.

B. The Alleged Educational Inadequacies Are Not Actionable Under the Education Article Because the Complaint Does Not and Cannot Plead Deficiencies Attributable to the State.

As this Court explained in *NYCLU*, a plaintiff fails to state an Education Article claim by merely alleging deficiencies in public schools and then charging "the State with the responsibility to determine the causes of the schools' inadequacies and devise a plan to remedy them." 4 N.Y.3d at 180. Rather, a plaintiff must provide at the pleading stage "a clear articulation of the asserted failings of the State, sufficient for the State to know what it will be expected to do should the plaintiffs prevail." *Id.*

Plaintiffs offer no meaningful response to *NYCLU*. For example, plaintiffs do not dispute that the educational inadequacies alleged in the complaint largely arise from matters of education

policy committed to local control. Indeed, the Appellate Division correctly recognized that the City decides which teachers to employ in its schools and how to train them; controls the selection of its curricula, courses of study, and textbooks; and controls which students to admit to G&T programs and select schools. (*See* R. 597.)

Instead, plaintiffs conflate the role of the City and the State in education policymaking.[2] However, it is well settled that a plaintiff must independently plead claims against state and local entities and officials based on the governments' respective roles in administering the challenged policy. For example, just last year, this Court concluded that claims against the State concerning alleged racial discrimination in New York City's real property taxation scheme were properly dismissed because the complaint failed to explain "why the State is liable for the City's methodological choices." *Tax Equity Now NY LLC v. City of New York*, 42 N.Y.3d 1, 32 (2024).

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[2] *Compare* Br. at 31 (arguing plaintiffs may state a claim "so long as they provide 'a clear articulation of [Defendants'] asserted failings'" (quoting *NYCLU*, 4 N.Y.3d at 180)), *with NYCLU*, 4 N.Y.3d at 180 (requiring "a clear articulation of the asserted failings of the State").

Plaintiffs' Education Article claim is similarly deficient here: they improperly seek to charge the State with responsibility for the City's implementation of education policy committed to local control. *See NYCLU*, 4 N.Y.3d at 180. Plaintiffs are wrong to argue (Br. at 32-33) that this Court's decision in *CFE II* supports their claim against the State. As the State Defendants explained in their opening brief (at 24-25), *CFE II* held that City mismanagement of funds did not relieve the State of its obligation to provide adequate funding to ensure that students receive a sound basic education. *See* 100 N.Y.2d at 922. In reaching that conclusion, this Court noted that "[r]elative to the State, the City has absolutely no control over the school funding system." *Id.* at 925 (quotation marks omitted).

That reasoning does not apply here because, rather than alleging the State does not provide adequate funding to the City, plaintiffs challenge the "day-to-day operation of the schools," for which "[n]either the Regents nor the SED is responsible." *See id.* at 904. Moreover, plaintiffs' argument that *CFE II* effectively established strict liability for the State (*see* Br. at 32-33) cannot be reconciled with this Court's subsequent holding that it is improper to

charge "the State with the responsibility to determine the causes of the schools' inadequacies and devise a plan to remedy them," *NYCLU*, 4 N.Y.3d at 180.

Finally, as the State Defendants explained in their opening brief (at 37-38), allegations concerning noncompliance with state guidance materials and standards (*see* R. 595-596) are insufficient to state an Education Article claim. Those authorities may "exceed notions of a minimally adequate or sound basic education." *CFE I*, 86 N.Y.2d at 317. Thus, proof of noncompliance "may not, standing alone, establish a violation of the Education Article." *Id.*

POINT II

PLAINTIFFS FAIL TO STATE AN EQUAL PROTECTION CLAIM AGAINST THE STATE DEFENDANTS

A. The State Defendants Are Not Responsible for the Alleged Equal Protection Violations.

As the State Defendants demonstrated in their opening brief (at 39-41), they play no role in many of the actions challenged by plaintiffs as equal protection violations. For example, the State Defendants play no role in developing or administering the G&T test (R. 20-21, 49-51) or in the admissions process for all but three

of the City's seven-hundred schools. Plaintiffs' assertions that "Defendants" collectively are responsible for a segregated pipeline beginning at kindergarten (Br. at 7, 35) are too conclusory to state an equal protection claim against the State Defendants without specifying their role, *see Tax Equity Now NY*, 42 N.Y.3d at 32.

Moreover, plaintiffs fail to plausibly allege that the State Defendants play an actionable role in the admissions process for those three schools subject to the Hecht-Calandra Act. The Act simply requires that the City base admissions to three specialized high schools on the results of a standardized test (*see* R. 124-125), and plaintiffs concede that they do "not categorically attack the use of standardized tests as part of admissions processes" (Br. at 16 n.8). Instead, plaintiffs explain that their challenge is to the particular "unvalidated, discriminatory testing" used for admissions to the City's select high schools. *See id.*

However, the plain text of the Hecht-Calandra Act does not require the City to use any particular test, so long as the test that is administered is a "competitive objective, scholastic achievement examination." (R. 125.) Indeed, plaintiffs' own allegations acknowl-

edge that the City has discretion to study and revise the test: they allege that local policymakers studied the exam in 2013 "to assess [its] validity" and that the "current iteration of the" test has been changed from the 2013 version.[3] (*See* R. 57.) Therefore, plaintiffs are mistaken to claim (Br. at 39) that the State mandates the use of any particular test for admissions to the specialized high schools.

Moreover, the Hecht-Calandra Act gives the City vast discretion over a Discovery Program, which is an alternative admissions mechanism to "promote racial, ethnic, geographic, and socioeconomic diversity." *Matter of C.K. v. Tahoe*, 211 A.D.3d 1, 12 (3d Dep't 2022) (quotation marks omitted); *see Chinese Am. Citizens Alliance of Greater N.Y. v. Adams*, 116 F.4th 161, 166 (2d Cir. 2024) (Hecht-Calandra Act "leave[s] many details about the Discovery Program to be determined by the" City). The existence of this alternative statutory mechanism confirms that the State does not require

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[3] Plaintiffs suggest (Br. at 47) that the City's role in administering the admissions test presents a question of fact, but plaintiffs cannot now create factual disputes with their own allegations or the plain text of the Hecht-Calandra Act.

the City to use any particular admissions process, much less one that may have a racially disparate impact.

B. A Statutory Examination Requirement for Admission to Three of the City's Seven Hundred High Schools Is Constitutional.

If plaintiffs had asserted a discrete equal protection challenge against the State arising from the Hecht-Calandra Act (which they did not), it would be inadequate to state a claim. The Hecht-Calandra Act is facially neutral, and what the Appellate Division characterized as plaintiffs' "thin" evidence of discriminatory intent (R. 600-601) is inadequate "to overcome the presumption of legislative good faith and show that the . . . Legislature acted with invidious intent," *Abbott v. Perez*, 585 U.S. 579, 605 (2018); *see Village of Arlington Hgts. v. Metropolitan Hous. Dev. Corp.*, 429 U.S. 252, 265-66 (1977). To the contrary, the legislative history of the Hecht-Calandra Act shows that the Legislature enacted it for a race-neutral reason: to preserve the City's specialized high schools in response to concerns that the City might abolish them or eliminate their stringent entrance requirements. (*See* R. 126, 128, 130, 133.)

Plaintiffs' allegations of invidious intent based on the statements of a single legislator are insufficient to state an equal protection claim. *See* Br. at 42. As the State Defendants have explained (State Br. at 42-43), the statements of a single legislator are legally insufficient to impute racial animus to an entire legislative body because "[w]hat motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it." *United States v. O'Brien*, 391 U.S. 367, 384 (1968); *see United States v. Suquilanda*, 116 F.4th 129, 143-44 (2d Cir. 2024); *Boston Parent Coalition for Academic Excellence Corp. v. School Comm. of Boston*, 996 F.3d 37, 49-50 (1st Cir. 2021).

The rest of plaintiffs' allegations concerning the Hecht-Calandra Act (*see* Br. at 40-42) also fail to overcome the presumption of legislative good faith or to show that the "actions en masse" of the 1971 Legislature "were motivated by racially discriminatory intent," *see Suquilanda*, 116 F.4th at 143-44.[4] In particular, plain-

[4] *See also Coalition for TJ v. Fairfax County Sch. Bd.*, 68 F.4th 864, 883 (4th Cir. 2023) (no invidious intent where no statements, "meeting minutes, or other documentation show[ed] that the policy

(*continued on next page*)

tiffs fail to acknowledge that the Legislature amended the proposed statute to address concerns that the testing requirement might have a racially disparate impact. As the legislative history shows, when the original draft was debated in the Assembly, "there was considerable objection" to a clause limiting the number of students who could be admitted under the Discovery Program. (R. 122.) After the bill passed the Assembly, the sponsors conferred with members of the Legislature who objected to the original version, and they agreed to amend the bill to eliminate the fourteen percent cap on the Discovery Program. (*See* R. 115-116 (final statute), 122, 177 (original draft with cap).) Minority lawmakers then largely withdrew their objections, and the Act passed with overwhelming approval. (R. 122.)

Plaintiffs are also wrong to suggest that they are entitled to discovery to prove their claim of invidious intent. *See* Br. at 37-39. As an initial matter, that argument fails to give effect to the presumption of good faith afforded to the Legislature. *See Abbott*,

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was adopted 'because of' a specific intent to reduce the number of" minority students at specialized high school).

585 U.S. at 603. In any event, plaintiffs identify no relevant, discoverable materials that they would seek. As a practical matter, it is unlikely that plaintiffs could locate many members of the 1971 Legislature to serve with discovery requests. But even if they could locate a substantial number of such legislators, legislative privilege would bar discovery into their individual intent in enacting the Hecht-Calandra Act.[5]

Moreover, the application of the *Arlington Heights* test to a fifty-year-old statute presents a question this Court can and should resolve as a matter of law based on the legislative history. *See Suquilanda*, 116 F.4th at 139, 141 n.11, 144 (rejecting request for evidentiary hearing and resolving *Arlington Heights* challenge based on legislative history). Viewed as a whole, the legislative history affirmatively shows that legislators worked in good faith to amend

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[5] *See Village of Arlington Hghts.*, 429 U.S. at 565 (depositions of legislators to ascertain their intent "frequently will be barred by privilege"); *see Lee v. City of Los Angeles*, 908 F.3d 1175, 1187 (9th Cir. 2018) (legislative privilege bars depositions of local legislators even in "extraordinary circumstances" (quotation marks omitted)); *City of Las Vegas v. Foley*, 747 F.2d 1294, 1298-99 (9th Cir. 1984) (granting writ of mandamus to bar depositions of city officials to determine their motives for enacting zoning ordinances).

the draft statute to address concerns about potential disparate racial impacts.

Finally, to the extent plaintiffs rely on allegations that the defendants have adhered to the testing requirement despite evidence of disparate impact (*see* Br. at 48-51), those allegations do not support an inference of discriminatory intent against the State Defendants. As explained above (at 12-14), plaintiffs concede that they are not challenging "the use of standardized tests as part of admissions processes" (*see* Br. at 16 n.8), and the Hecht-Calandra Act affords the City discretion to revise the admissions test to mitigate any disparate impact. Accordingly, the retention of a testing requirement in of itself does not support an inference of discriminatory intent on the part of the State Defendants. Moreover, the application of the *Arlington Heights* analysis here turns on the intent of the 1971 Legislature that enacted the Hecht-Calandra Act. *See Abbott*, 585 U.S. at 604-05; *Suquilanda*, 116 F.4th at 141-42. Plaintiffs have not asserted any plausible allegations that the Legislature has collectively acted with invidious intent in recent years by failing to amend or revoke the Hecht-Calandra Act's

testing requirement. *See People v. New York City Tr. Auth.*, 59 N.Y.2d 343, 346 (1983) (allegation of "present intent to discriminate" required to state equal protection claim).

CONCLUSION

For the reasons set forth above and in the State Defendants' opening brief, the Court should reverse the decision and order of the Appellate Division, First Department reinstating plaintiffs' Education Article and Equal Protection Clause claims against the State Defendants.

Dated: New York, New York
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Respectfully submitted,

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AFFIRMATION OF COMPLIANCE

Pursuant to the Rules of Practice of the New York Court of Appeals (22 N.Y.C.R.R.) § 500.13(c)(1), Mark S. Grube, an attorney in the Office of the Attorney General of the State of New York, hereby affirms that according to the word count feature of the word processing program used to prepare this brief, the brief contains 3,442 words, which complies with the limitations stated in § 500.13(c)(1).

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Mark S. Grube