

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

Plaintiffs-Appellants,

and

PLEASANTVILLE BOARD OF EDUCATION
and WILDWOOD BOARD OF EDUCATION,

Intervenor-Plaintiffs,

(Caption continued inside cover)

**SUPERIOR COURT OF
NEW JERSEY
APPELLATE DIVISION**

Docket No. A-003471-24

CIVIL ACTION

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

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

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

**BRIEF OF *AMICUS CURIAE* THE REDRESS MOVEMENT
IN SUPPORT OF PLAINTIFFS-APPELLANTS**

Date Submitted: April 27, 2026

v.

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

Defendants-Appellees,

and

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

Intervenor-Defendants.

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STATEMENT OF INTEREST OF AMICUS CURIAE

The Redress Movement brings local communities together to leverage collective power to redress the harms of housing segregation—including the harm of educational segregation that arises from housing segregation. Redress staff organizers live in our partner communities and build relationships that center Black and Brown communities most harmed by segregation. The Redress Movement envisions a world where people have the reparative resources they deserve, and the power to build the just, flourishing communities they long to live in.

LEGAL ARGUMENT¹

The trial court factually concluded that Plaintiffs “have demonstrated marked and persistent racial imbalance in numerous school districts across the State.” Pa60. Despite that manifest educational segregation, the court held the State of New Jersey did not violate the Constitution’s Anti-Segregation Clause, N.J. Const., art. I, ¶ 5, which prohibits even unintentional segregation in public education. The reason: The “data does not demonstrate statewide unconstitutionality, across all districts, across all regions.” Pa59. But that is not the relevant legal question.

¹ *Amicus* adopts the Statement of Facts and Procedural History set forth in Plaintiffs-Appellants’ briefing. “Pb” refers to Plaintiffs’ Opening Brief; “Pa” refers to Plaintiffs’ appendix; “Db” refers to State Defendants’ brief; and “Da” refers to State Defendants’ appendix.

Plaintiffs assert “statewide liability,” by which they mean: (1) the record documents—as the trial court concluded—that educational segregation exists in many, though not all, districts throughout the State; and (2) the State is the legally responsible party for that widespread educational segregation arising as a direct consequence of the State’s inflexible Residency Statute. As this brief explains, partial summary judgment as to the State’s liability is thus warranted.

The State’s central argument against its liability is that “Plaintiffs do not identify any action State Defendants took, or failed to take, because of race that caused, or contributed to, the alleged unconstitutional condition in the public schools.” Db20. Liability under the Anti-Segregation Clause, however, does not require that the State take an action *because of race*. Instead, the State is liable when its actions cause or perpetuate educational segregation, intentionally or otherwise. And that the State has done here: The State has a lengthy history of fostering residential segregation.² And the State has imported that deeply entrenched residential segregation into the educational context through the inflexible operation of the State’s Residency Statute tying school attendance to

² *Amicus* on this brief originally filed a proposed *amicus* brief jointly with *amici* Poverty & Race Research Action Council, National Coalition on School Diversity, Fair Share Housing Center, and National Housing Law Project in New Jersey. That brief addressed both the history of the State’s role in residential and educational segregation, as documented in the brief resubmitted by those *amici*, and the legal arguments advanced in this resubmitted brief. “Aa” refers to page numbers in the Appendix approved for filing submitted at the time of that original proposed *amicus* brief.

place of residence. Unless the Anti-Segregation Clause is properly interpreted, marked and persistent educational segregation will continue unabated.

I. NEW JERSEY’S DECISION TO MAINTAIN EDUCATIONAL SEGREGATION THROUGH INFLEXIBLE APPLICATION OF THE RESIDENCY STATUTE MAKES THE STATE LIABLE FOR VIOLATING THE ANTI-SEGREGATION CLAUSE

The Anti-Segregation Clause provides: “No person shall be . . . segregated . . . in the public schools” N.J. Const, art. I, ¶ 5.³ This mandate prohibiting racial segregation in public schools applies not only when that segregation is intentional, but also, as here, “when segregation in fact, though not official policy, results from long standing housing and economic discrimination and the rigid application of neighborhood school districting.” *Booker v. Bd. of Ed. of City of Plainfield, Union Cnty.*, 45 N.J. 161, 168 (1965). The State’s deliberate fostering and enabling of residential and educational segregation is thus not necessary for finding liability under the Anti-Segregation Clause. But neither is it irrelevant. The State’s causal responsibility for continued educational segregation makes the State liable regardless of any discriminatory intent.

Today, more than 60 years after the Supreme Court’s holding in *Booker*, large numbers of students in New Jersey public schools remain educated in

³ The Anti-Segregation Clause was adopted by the New Jersey’s 1947 Constitutional Convention, 1 Proceedings Record, 1947 N.J. Constitutional Convention at 642 (Aa460), after extensive efforts by Oliver Randolph, the sole African American delegate, see David Wildstein, *Trailblazer: Assistant U.S. Attorney Oliver Randolph*, N.J. Globe (Jan. 15, 2024), newjerseyglobe.com/trailblazer/trailblazer-assistant-u-s-attorney-oliver-randolph-4/ (Aa452–55).

highly segregated environments because of the State’s ongoing, rigid application of neighborhood school districting. The record demonstrates educational segregation, in violation of the Anti-Segregation Clause, at the very least in the 23 intensely segregated school districts documented in the record.

This case presents the question whether the Anti-Segregation Clause requires that the State modify a legal regime that imposes residency-based school attendance, thereby—as the State has long known⁴—resulting in stark unconstitutional educational segregation that will continue unless and until that law is modified. The answer to that question, based on the record before the trial court, is manifest: the State is liable for enabling and maintaining a system that violates the Anti-Segregation Clause. The State is obligated to recognize the existence of educational segregation and take reasonably feasible steps to counter that segregation. Partial summary judgment as to liability is thus fully warranted on this record. Absent judicial recognition of the full scope of the Anti-Segregation Clause mandate, a majority of New Jersey’s Black and Latino schoolchildren will continue to be educated in segregated classrooms.

⁴ See *Booker*, 45 N.J. at 168–73; *Spencer v. Kugler*, 326 F. Supp. 1235, 1243 (D.N.J. 1971) (New Jersey has a “continuing trend toward racial imbalance caused by housing patterns” and “has degenerated to extreme racial imbalance in some school districts.”), *aff’d*, 404 U.S. 1027 (1972); *Jenkins v. Morris Twp. Sch. Dist.*, 58 N.J. 483, 495–96 (1971).

A. The Anti-Segregation Clause Bars the State from Maintaining an Inflexible Residency Statute Dictating Segregated Schools

The Anti-Segregation Clause bars both intentional and *de facto* educational segregation. *Booker*, 45 N.J. at 168. New Jersey has prohibited segregation in public education since an 1881 law mandating that “no child . . . be excluded from any public school . . . on account of . . . color.” L. 1881, c. 149, § 1.⁵ In 1947, the State incorporated that principle into the Anti-Segregation Clause, the first of its kind in any state constitution.⁶ Yet New Jersey has become one of the most educationally segregated states in the country.

The record establishes what Plaintiffs call “statewide liability,” Pb25, a term of art that the trial court and State have misunderstood. What Plaintiffs sought to establish—and what the record establishes as a matter of law—is this: (1) The State is the responsible party for the educational segregation that exists in numerous districts throughout the State; (2) The State’s responsibility arises from its choice to continue to apply the Residency Statute, inflexibly, and

⁵ See *Booker*, 45 N.J. at 173–74; Evelyn Blackmore Duck, *A Historical Study of a Racially Segregated School in New Jersey from 1886 to 1955* 45 (1984) (Ed.D. dissertation, Rutgers Univ.) (Aa462) (“[T]he practice of segregated schools and educational facilities continued in New Jersey despite the ruling of the Law of 1881”); see *State ex rel. Pierce v. Union Dist. Sch. Trs.*, 46 N.J.L. 76, 78–79 (Sup. Ct. 1884) (finding illegal a public school’s refusal to admit a mixed-race child); *Jenkins v. Morris Twp. Sch. Dist.*, 58 N.J. 483, 495–96 (1971) (“Since 1881 . . . legislation declar[es] it unlawful to exclude a child from any public school because of his race . . . and indirect as well as direct efforts to circumvent the legislation” are unlawful).

⁶ N.J. Const, art. I, ¶ 5; see generally Bernard K. Freamon, *The Origins of the Anti-Segregation Clause in the New Jersey Constitution*, 35 Rutgers L.J. 1267 (2003) (Aa468–526).

thereby transform residential segregation into educational segregation.⁷

Record evidence establishes that this choice has resulted in educational segregation, at a minimum, in 23 districts across eight counties that are intensely segregated in an absolute sense and, as the record shows—but the trial court failed to recognize—in comparison to nearby districts. As the trial court found, even beyond those districts, “approximately 75% ‘of [New Jersey] children are currently going to school in a place that is [racially] disproportionate or nonrepresentative of the overall demographic[s] of the state.’” Pa42. The trial court, however, misconstrued liability to require showing “statewide unconstitutionality, across all districts, across all regions.” Pa59.

But neither the Anti-Segregation Clause nor Plaintiffs rest on that all-or-nothing proposition. Plaintiffs demonstrated the State’s liability under Anti-Segregation Clause precedent as to the claim they actually assert: As the trial court explained, “Plaintiffs recount the undisputed history of discriminatory governmental housing policy that resulted in our State’s residential segregation, which the residency statute replicates in the public schools.” Pa52–53. And, as the trial court found, Plaintiffs “have demonstrated marked and persistent racial imbalance in numerous school districts across the State that Defendants’ actions, policies, programs, and inaction have failed to remedy.” Pa54. On this record,

⁷ See Pb25–30 (asserting these arguments to inform the meaning of “statewide liability”).

those districts unquestionably include the 23 intensely segregated districts, and also include the nearby districts that are disproportionately White and wealthy, depriving students therein of the benefits of an integrated education, *see, e.g., Morean v. Bd. of Ed.*, 42 N.J. 237, 239 (1964); *Eliot v. Bd. of Ed. of Neptune Tp.*, 94 N.J. Super. 400, 401 (App. Div. 1967).

Other similarly situated jurisdictions have reached a conclusion similar to that advanced by Plaintiffs. The Connecticut Supreme Court adopted an approach parallel to that warranted here in *Sheff v. O'Neill*, 678 A.2d 1267, 1271 (Conn. 1996). *Sheff* held that Connecticut's constitutional prohibition of discrimination in public schools required the state to take affirmative steps to ensure racial integration in the Hartford public school system, finding the state responsible for the *de facto* educational segregation caused by Connecticut's version of a residency statute. *See id.* at 1285 (citing favorably to *Jenkins*, 58 N.J. at 498). The state was held constitutionally liable for the consequences of the legislature's creation of municipal and school district borders that resulted in educational segregation, and for the state's inaction in the face of that segregation, just as here.⁸ Connecticut has since taken major steps to ameliorate

⁸ “[T]he plaintiffs challenge the failure of the legislature to address . . . de facto [segregation because] State law set[s] the borders of school districts to coincide with town boundaries and requiring all children to attend public school within the district in which they reside.” *Sheff*, 678 A.2d at 1277–78. “The legislature has created the current school districts, has required students to

the racial inequality that plagued its public school systems, and the benefits of those positive changes have been notable and welcome across the state.⁹

Similar New Jersey precedent concerning educational segregation demonstrates two propositions applicable here. *First*, intensely segregated schools violate the Anti-Segregation Clause when, as here, Plaintiffs demonstrate a statistically proven, substantial variation in racial composition within a district or between nearby districts. *See Booker*, 45 N.J. at 164. That is so even if the educational segregation is unintentional and is driven by a residency statute in conjunction with factors for which the State is not responsible, including socio-economic considerations, the continuing effects of historical governmental discrimination in housing, and the continuing effects of private housing discrimination. *See Morean*, 42 N.J. at 242–43 (finding that such unintentional racial imbalance nonetheless must be remedied).

Second, the Anti-Segregation Clause is violated when the government makes a willful choice to engage in conduct, even absent discriminatory intent, that meaningfully increases educational segregation or impedes educational integration, either within or across districts. *See Jenkins*, 58 N.J. at 500–01

attend school and has determined which students will attend a particular school district. . . . Sound principles of public policy support our conclusion that the legislature’s affirmative constitutional responsibility for the education of all public schoolchildren encompasses responsibility for segregation to which the legislature has contributed, even unintentionally.” *Id.* at 1285.

⁹ *See* ACLU, *Sheff v. O’Neill*, aclu.org/cases/sheff-v-oneill (Aa527–29).

(requiring solutions that crossed district lines). After six decades, the State is not a passive observer helpless to address ongoing educational segregation that its laws perpetuate. The State’s choice to maintain the inflexible application of the Residency Statute is a decision warranting legal responsibility, as it was in *Sheff*. The State has chosen to maintain residency-based district borders despite its awareness that doing so will inevitably perpetuate continued educational segregation. The States is thus liable under the Anti-Segregation Clause.

B. The Residency Statute Has Turned Residential Segregation into Educational Segregation

The State has imported its stark residential segregation into educational segregation through the Legislature’s deliberate choice to make school attendance a function of municipal residence. The State has willfully decided to maintain an inflexible statutory scheme that inevitably perpetuates segregation in its public schools. Though the Legislature’s choice is not driven by animus, the State’s *de facto* educational segregation is driven by that choice.

The trial court so recognized. Pa15–16. The “Residency Statute” directs that “[p]ublic schools shall be free to [children] domiciled within the school district.” N.J.S.A. 18A:38-1.¹⁰ School attendance is a function of residence

¹⁰ See also N.J.S.A. 18A:8-1 (“Each municipality [in New Jersey] shall be a separate local school district except as otherwise provided”); N.J.A.C. 6A:22-3.1(a).

within racially segregated municipalities.¹¹ Thus, the State’s longstanding history of enabling racially and economically segregated municipalities, and its ongoing choice to tether school attendance to municipal residence, is the primary cause of the State’s continued educational segregation.

C. Enforcement of the Anti-Segregation Clause Complements and Completes New Jersey’s Constitutional Commitment to Equality and Integration Recognized in *Mount Laurel* and *Abbott*.

The Anti-Segregation Clause’s guarantee of the right to an integrated education is part of a coordinated set of rights to equality and participation that our Constitution grants New Jersey residents. The right to educational integration asserted in this case complements but does not duplicate the rights to socio-economic integration in housing in the *Mount Laurel* line of cases and to educational equality in the *Abbott* line of cases.¹²

1. *Mount Laurel Furthers Socioeconomic Integration—in Wealthier, Disproportionately White Municipalities*

In the *Mount Laurel* line of cases, the New Jersey Supreme Court has found a statewide need to ensure that wealthier municipalities do not employ land use regulations to bar low- and moderate-income housing, thereby precluding residency by poorer New Jerseyans. *See S. Burlington Cnty. N.A.A.C.P. v. Mount Laurel Twp.*, 67 N.J. 151, 158, 174–75 (1975) (“*Mount*

¹¹ See Evans, *School Segregation in N.J. Is Not an Accident*, New Jersey Future (Aa322–24).

¹² Cf. Pb53-54 (explaining the relevance of “the *Mount Laurel* and *Abbott* line of cases.”).

Laurel I”). The Court has recognized that each municipality in the State bears an affirmative constitutional obligation to take on its share of affordable housing to ensure that wealthier municipalities do not fence out low- and moderate-income people from their borders.¹³

Mount Laurel I challenged a zoning regime that permitted only detached single-family homes, “the most expensive type of quarters,” thereby entirely excluding poorer, disproportionately Black and Latino families.¹⁴ The Court recognized that this issue was not limited to Mount Laurel itself, recognizing the problem in wealthier municipalities throughout much of the State.¹⁵ *Mount Laurel I* held that “every such municipality” has an affirmative obligation to provide its “fair share” of affordable housing.¹⁶ This was not a matter of municipal discretion or legislative grace—it was a statewide, constitutional imperative even though not every municipality was in violation of its dictates.

When the Court handed down its first *Mount Laurel* decision, it expressed confidence that these municipalities would meet the constitutional mandate themselves.¹⁷ But, when widespread noncompliance became evident, in spite of good faith efforts by some municipalities, the Court confronted a stark choice in

¹³ *Mount Laurel I*, 67 N.J. at 158, 174–75.

¹⁴ *Id.* at 159, 181–82.

¹⁵ *Id.* at 160.

¹⁶ *Id.* at 174.

¹⁷ *Id.* at 192; *see, e.g.*, H. Gillette, *supra* note 23, at 177–78 (Aa113–14) (noting that it was left to the state’s municipalities “to act in good faith to revise their zoning codes”).

Southern Burlington N.A.A.C.P. v. Mount Laurel Township, 92 N.J. 158, 200–01, 212–13 (1983) (“*Mount Laurel II*”): abandon the constitutional principle or strengthen its enforcement mechanisms.

In *Mount Laurel II*, the Court chose enforcement, declaring itself “more firmly committed to the original Mount Laurel doctrine than ever” and “determined, within appropriate judicial bounds, to make it work.” *Id.* at 199. The Court acknowledged the “social[,] economic . . . and . . . political consequences” of its decision but emphasized that “enforcement of constitutional rights [could not] await a supporting political consensus.” *Id.* at 212–13. New Jersey was “nowhere near where [it should have been] with regard to the administration of the doctrine,” thus judicial intervention was constitutionally required. *Id.* at 201.

The Court has since consistently reaffirmed and reinforced the *Mount Laurel* doctrine, demonstrating its enduring commitment to ensuring statewide access to affordable housing.¹⁸ Approximately 70,000 affordable homes were built in suburban New Jersey through *Mount Laurel* from 1980 to 2022. This is

¹⁸ See, e.g., *Hills Dev. Co v. Twp. of Bernards in the Cnty. of Somerset*, 103 N.J. 1, 25 (1986) (“*Mount Laurel III*”) (approving the use of the Council on Affordable Housing (COAH) to determine statewide compliance with the *Mount Laurel* doctrine); *Holmdel Builders Ass’n v. Twp. of Holmdel*, 121 N.J. 550, 586 (1990) (approving the imposition of fees “on the development of commercial and non-inclusionary residential property”); *In re Adoption of N.J.A.C. 5:96 & 5:97 ex rel. N.J. Council on Affordable Hous.*, 221 N.J. 1, 6 (2015) (“*Mount Laurel IV*”) (recognizing “COAH’s failure to fulfill its statutory mission,” rejecting any exhaustion requirement, and restoring the judiciary as the forum of first resort for *Mount Laurel* claims).

significant, but it falls far short of the systemic change to affordable housing that would be required to provide any comprehensive remedy to educational segregation. Furthermore, because the remedy in *Mount Laurel* is tailored to economic segregation, rather than racial segregation, many of those homes are occupied by lower-income White families.¹⁹ The *Mount Laurel* line of cases thus promotes a meaningful degree of socio-economic and racial integration as to residence in wealthier districts, but it is neither intended to nor effective in remedying the problem of widespread school segregation, particularly as to poorer districts with disproportionately Black and Latino schoolchildren.

2. *Abbott Ensures Equal Access to a Thorough and Efficient Education—in Poorer, Relatively Non-White School Districts*

The *Abbott* line of cases mandates equitable and adequate funding to ensure the availability of a “thorough and efficient education” for students in designated “special needs” school districts (“Abbott Districts”) disproportionately composed of at-risk, low-income, and non-White students. *See Abbott v. Burke*, 119 N.J. 287, 295 (1990) (“*Abbott II*”). These students faced greater educational needs than their peers in wealthier districts but received inadequate funding to meet the constitutional standard. The Court

¹⁹ Fair Share Housing Ctr., *Dismantling Exclusionary Zoning: New Jersey’s Blueprint for Overcoming Segregation* (2023), fairsharehousing.org/wp-content/uploads/2025/06/Dismantling-Exclusionary-Zoning_New-Jerseys-Blueprint-for-Overcoming-Segregation.pdf (Aa532–65).

therefore mandated funding parity, assuring “funding of education in poorer urban school districts at the level of property-rich districts.”²⁰

As in *Mount Laurel*, the Court in *Abbott* held the State liable for a constitutional violation stemming directly from state legislation—specifically, a school funding statute that perpetuated educational inequality by assigning fiscal responsibility to municipalities whose main source of funds was local property tax revenues, with the State failing to take responsibility for the fundamental denial of educational rights that resulted.²¹ The *Abbott* Court framed its holding as addressing the constitutional rights of “the urban poor” rather than explicitly invoking racial discrimination. *Abbott II*, 119 N.J. at 391. Yet the Court recognized that the constitutional deprivation in the Abbott Districts fell overwhelmingly on racial minorities, mirroring the disproportionate racial impact observed in *Mount Laurel*.²²

Underfunding of the Abbott Districts was the direct result of the Legislature’s choice to assign financial responsibility to local school districts

²⁰ See, e.g., Lawrence E. Everett, *Segregated Schools & Student Achievement: The Relationship Between Same Culture Schools & the Achievement of African American and Latino Students* 88 (2006) (Ed.D. dissertation, Seton Hall Univ.) (Aa567).

²¹ See *Abbott II*, 119 N.J. at 342.

²² See *Abbott II*, 119 N.J. at 392 (“The devastation of the urban poor is more significant in New Jersey than in most states both because of our demographics and the structure of our society. Our large black and Hispanic population is more concentrated in poor urban areas and will remain isolated from the rest of society unless this educational deficiency in poorer urban districts is addressed.”).

that were dependent on local property taxes to raise revenue. *See id.* at 384–85. The Court placed primary responsibility for remedying the constitutional violation on the State—rather than the individual districts—though the remedy was directed to the particular school districts found to be underfunded, *see id.* at 385–86, a set of districts that later expanded as further facts were developed. As with *Mount Laurel*, the Court has revisited and reinforced *Abbott* when necessary to ensure the State’s continued compliance with its constitutional obligation to provide a thorough and efficient education.²³ Though *Abbott* requires that the education provided in poorer, more non-White districts is sufficiently funded, *Abbott*, like *Mount Laurel*, is not intended to and does not remedy educational segregation in those districts, it simply funds them equally.

3. *The State’s Liability for Legislation that Racially Segregates Its Public Schools Complements Abbott and Mount Laurel*

A finding of state liability here aligns with and complements the New Jersey Supreme Court’s constitutional jurisprudence in *Mount Laurel* and *Abbott*. Those cases implement New Jersey’s Constitutional guarantees of equity and equality and our judiciary’s thoughtful and responsible interpretation of those Constitutional rights. But those lines of cases simply do not address the harms and legal claims raised in this case concerning educational segregation.

²³ *See, e.g., Abbott by Abbott v. Burke*, 136 N.J. 444, 446–47 (1994) (“*Abbott III*”); *Abbott by Abbott v. Burke*, 149 N.J. 145, 152–53 (1997) (“*Abbott IV*”).

Mount Laurel takes meaningful steps to require, statewide, that wealthier districts take on some measure of obligation to enable residency by poorer, disproportionately non-White New Jerseyans. But *Mount Laurel*, by its very nature, provides only for limited residential, socio-economic integration, even in the wealthier districts in which it does apply. It has a correspondingly modest effect on educational racial segregation in those wealthier, Whiter districts. *Mount Laurel*, however, does nothing to further educational segregation in the poorer and disproportionately non-White districts that are educationally intensely segregated and present the central concern in this case.

Abbott looks to the rights of individual students in poorer, disproportionately non-White districts. It ensures that students in those districts are not harmed by New Jersey's statewide system of funding education through local property taxes. *Abbott* thus ensures that though the education in those poorer districts is largely economically and racially separate, it is fiscally equal.

Abbott and *Mount Laurel* advance equality. Neither, however, addresses the stark educational segregation in New Jersey's public schools, a fundamental wrong that the Anti-Segregation Clause forbids. Enforcement of the right to educational integration gives life to the full scope of our Constitution's guarantee of equality *and* its prohibition of segregation. The Anti-Segregation Clause ensures that, insofar as reasonably feasible, education in New Jersey is

not merely funded equally—it is also not racially separate.²⁴

D. The State Is Liable for Perpetuating Educational Segregation

As the Supreme Court observed optimistically in *Booker*, “[i]t may well be, as has been suggested, that when current attacks against housing and economic discriminations bear fruition, strict neighborhood school districting will present no problem.” *Booker*, 45 N.J. at 171. Given that hope, *Booker* expressly stated that the Court was not *yet* ready to find that inflexible application of residency requirements to constrain school attendance “*per se* is unconstitutional.” *Id.* at 168–70. The Court explained that then-existing residential segregation and thus educational segregation might fade with the passage of time and the success of efforts toward residential integration.

But if that did not come to pass, the Court observed, inflexible application of the Residency Statute would have to yield to the Constitution: the Anti-Segregation Clause dictates liability “when segregation in fact, though not official policy, results from long standing housing and economic discrimination and the *rigid application of neighborhood school districting*.” *Id.* at 168 (emphasis added). In the six decades that have passed since *Booker*, the hopes

²⁴ The harm to New Jersey students from a segregated educational environment is not limited to non-White students in intensely segregated districts; every student in every segregated district, whether poor and disproportionately non-White, or wealthy and disproportionately White, is harmed by not being exposed to an integrated educational system. *See Booker*, 45 N.J. at 170–71 (recognizing that all “children must learn to respect and live with one another in multiracial and multi-cultural communities and the earlier they do so the better”).

expressed therein have been frustrated. Despite the State's genuine efforts to fulfill its Constitutional mandate, educational segregation remains an entrenched reality. The passage of time, and the rights existing and remedies imposed under *Mount Laurel* and *Abbott*, have not remedied and will not remedy educational segregation. This is evident in at least the 23 intensely segregated districts established as a matter of law on this record. The impropriety of continued, inflexible application of the Residency Statute is now manifest.

Booker instructed that if education segregation persisted as a consequence of restricting school attendance to municipal residence, that policy must cede to the Constitution. The *Booker* Court did not then hold or “imply that the neighborhood school policy *per se* is unconstitutional, but [instead] that it must be abandoned or modified when it results in segregation in fact.” *Id.* at 170 (quoting *Barksdale v. Springfield Sch. Comm.*, 237 F. Supp. 543, 546 (D. Mass. 1965)). As this record shows, the Residency Statute has, for the many decades since *Booker*, resulted in segregation in fact. It must be abandoned or modified.

New Jersey courts have regularly found liability for *de facto* segregation and demonstrated an understanding that segregation operates not only within but between neighboring municipalities and school districts, and even when intense

segregation does not exist in every school within a district.²⁵ See, e.g., *Booker*, 45 N.J. at 164; *Jenkins*, 58 N.J. at 506. So, too, is the State liable for violations of the Anti-Segregation Clause that arise from the inflexible application of its laws even though not every district in the State is intensely segregated.

The record in this case definitively demonstrates that the State's choice to maintain its inflexible application of the Residency Statute has directly caused educational segregation in at least the 23 intensely segregated districts. Moreover, this record presents a compelling argument that the time has come to conclude that the system of unyielding residency requirements is so deeply flawed and so plainly the root cause of significant educational segregation that it can no longer be countenanced as it operates throughout the State, and that a comprehensive remedy must be devised to redress decades of segregation. Summary judgment on that broader question is warranted.

But even if that were not so, the State's liability for educational segregation in the 23 intensely segregated districts is plain. The trial court did not address that question below, instead only addressing the all-or-nothing proposition advanced by Defendants, not by Plaintiffs.

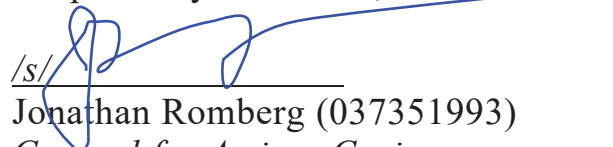
²⁵ See *Jenkins v. Twp. of Morris Sch. Dist.*, 58 N.J. 483, 499 (1971) (noting municipal boundaries reflected racial splintering, and empowering the Commissioner of Education to order a merger of schools to prevent the creation of racially segregated schools); see also *Morean v. Bd. of Educ. of Town of Montclair*, 42 N.J. 237, 242–43 (1964); *Bd. of Educ. of Borough of Englewood Cliffs, Bergen Cnty. v. Bd. of Educ. of City of Englewood, Bergen Cnty.*, 257 N.J. Super. 413, 464–65 (App. Div. 1992).

Given the uncontested facts in this record, this Court should recognize that the State's choice to maintain an unyielding tie between residence and school attendance violates the Anti-Segregation Clause. That is so even if some districts, through their own extraordinary efforts or through happenstance, provide an integrated educational environment. As *Booker* recognized sixty years ago, tethering residency to school attendance "must be abandoned or modified when it results in segregation in fact." 45 N.J. at 170. As this record proves, the inflexible application of the Residency Statute has resulted and will continue to result in segregation in fact. It must be abandoned or modified.

CONCLUSION

For the reasons set forth above, *Amicus* urges this Court to uphold the trial court's factual findings but reverse the denial of partial summary judgment.

Respectfully submitted,


/s/ _____
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