

LATINO ACTION NETWORK; NAACP NEW JERSEY STATE CONFERENCE; LATINO COALITION; URBAN LEAGUE OF ESSEX COUNTY; THE UNITED METHODIST CHURCH OF GREATER NEW JERSEY; MACKENZIE WICKS, A MINOR, BY HER GUARDIAN AD LITEM, COURTNEY WICKS; MALI AYALA RUEL-FEDEE, A MINOR, BY HIS GUARDIAN AD LITEM, RACHEL RUEL; RA'NAYA ALSTON, A MINOR, BY HER GUARDIAN AD LITEM, YVETTE ALSTON-JOHNSON; RA'YAHN ALSTON, A MINOR, BY HIS GUARDIAN AD LITEM, YVETTE ALSTON-JOHNSON; DASHAWN SIMMS, A MINOR, BY HIS GUARDIAN AD LITEM, ANDREA HAYES; DANIEL R. LORENZ, A MINOR, BY HIS GUARDIAN AD LITEM, MARIA LORENZ; and MICHAEL WEILL-WHITEN, 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 *AMICI CURIAE* POVERTY & RACE RESEARCH ACTION
COUNCIL, NATIONAL COALITION ON SCHOOL DIVERSITY, FAIR
SHARE HOUSING CENTER, NATIONAL HOUSING LAW PROJECT,
AND THE REDRESS MOVEMENT IN SUPPORT OF PLAINTIFFS-
APPELLANTS**

Date Submitted: March 16, 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 AMICI CURIAE

The Poverty & Race Research Action Council (PRRAC) is a civil rights law and policy organization promoting research-based advocacy strategies to address structural racial inequality. Its work focuses on developing actionable policies to overcome the mechanisms that continue to reproduce historical patterns of racial and economic segregation in schools and communities and is informed by a national network of researchers, organizers, attorneys, educators, and housing professionals. PRRAC is a founding member of NCSD and serves as its fiscal sponsor.

Founded in 2009, the National Coalition on School Diversity (NCSD) is a network of more than 50 national civil rights organizations, university-based research centers, and state and local coalitions working to expand support for government policies that promote school diversity and reduce racial and economic isolation in elementary and secondary schools. NCSD serves as the central hub of the school diversity field. Its work is informed by an advisory panel of scholars and academic researchers working on issues of equity, diversity, and desegregation/integration.

Fair Share Housing Center (FSHC), founded in 1975, is a public interest organization dedicated to defending the housing rights of New Jersey's low-income households. FSHC was founded by the plaintiffs and attorneys who

brought the original *Mount Laurel* lawsuit after southern New Jersey experienced a period of White flight and gentrification, with White people leaving cities like Camden and Philadelphia in favor of suburban towns like Mount Laurel. FSHC's mission is to end discriminatory and exclusionary housing patterns that deprive households of the realistic opportunity to live in safe, decent, and affordable housing with equal access to educational and economic opportunities.

The National Housing Law Project (NHLP) is a nonprofit organization committed to advancing housing justice for poor people and communities. For more than 40 years NHLP has coordinated the Housing Justice Network, which includes more than 2,000 legal services attorneys, advocates, and organizers who work to strengthen and enforce tenants' rights and increase housing opportunities for underserved communities throughout the country. Housing Justice Network members routinely assist people who have experienced housing discrimination in vindicating their rights and ending discriminatory practices harmful to themselves and their communities.

The Redress Movement brings local communities together to leverage collective power to redress the harms of 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.

PRELIMINARY STATEMENT

The trial court concluded, based on the State’s own statistical reports, that 46% of Black and Latino public school students in New Jersey attend schools that are more than 90% non-White.¹ It also concluded that there are 23 intensely segregated school districts with very high poverty rates in which *nearly all* students are Black and Latino—a demographic composition that sharply contrasts with nearby districts. Importantly, as the court acknowledged, segregation in New Jersey primarily operates between school districts rather than within them. Despite that record of stark educational segregation, the court declined to find the State of New Jersey liable to any extent for violating the Constitution’s Anti-Segregation Clause, N.J. Const., art. I, ¶ 5, which forbids segregation—intentional or otherwise—in the State’s public schools. Why? The trial court reasoned that the “data does not demonstrate statewide unconstitutionality, across all districts, across all regions.” Pa59.²

¹ This brief uses the language and capitalization employed in the trial court’s decision.

² “Pb” refers to Plaintiffs’ brief; “Pa” refers to Plaintiffs’ appendix; “Db” refers to State Defendants’ brief; “Da” refers to State Defendants’ appendix; and “Aa” refers to Amicus’s appendix.

The trial court's conclusion is premised on an ahistorical view of school segregation, ignores New Jersey's historical and ongoing involvement in school segregation, and is incorrect as a matter of law. *Amici* offer this brief to provide this Court with the necessary historical context regarding residential segregation in New Jersey and how the State has entrenched that residential segregation into educational segregation, including through inflexible application of the Residency Statute. *Amici* submit that these historical facts are relevant to the Court's consideration of the State's liability under the Anti-Segregation Clause. Building upon that history, *amici* explain that the record establishes unconstitutional segregation in at least the 23 intensely segregated districts, and both history and legal precedent establish that the State is the responsible party for that educational segregation. No county or municipality can, on its own, solve a problem that does not stop at its local borders and is enabled by the State.

Amici further explain that New Jersey courts have not shied away from upholding the guarantees of the New Jersey Constitution that require social and racial equity. The trial court's ruling is a departure from that precedent. A finding of State liability under the Anti-Segregation Clause, in contrast, follows directly from the Constitution and from the facts. It is also a logical extension of previous constitutional decisions like (i) *Mount Laurel*, which required that wealthy municipalities must provide their fair share of affordable housing,

welcoming poor and non-White residents into their borders and school districts; and (ii) *Abbott v. Burke*, which required that funding for poor and disproportionately non-White school districts must be sufficient to ensure that students in those districts receive a thorough and efficient education.

While the *Mount Laurel* and *Abbott* lines of cases have been important steps toward racial equality and socio-economic integration, they have not solved the persistent and unconstitutional problem of school segregation. The *Mount Laurel* decisions have provided a number of low-income children with access to less segregated, higher-performing schools through new affordable housing in wealthier, generally Whiter districts, but fail to address the school segregation imposed on hundreds of thousands of families living in the intensely segregated urban districts. *Abbott* mandates adequate funding for a subset of school districts that are disproportionately poor and non-White but does not alter the composition of the students who attend schools in those districts.

This case presents the Court with a record documenting widespread educational segregation in New Jersey and a constitutional mandate that prohibits educational segregation, *whatever its cause*. The State's primary argument against 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. This

argument is wrong as a factual matter. Points I and II, *infra*, document the State's significant responsibility for contributing to the educational segregation that exists today. It is also wrong on the law. Point III, *infra*, explains why liability under the Anti-Segregation Clause does not require that the State cause educational segregation or even contribute to it (though, as explained below, the State has done precisely that). Instead, the Anti-Segregation Clause mandates that the State act to take reasonably feasible steps to remedy the educational segregation that does exist, something it has not done.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Amici adopt the Statement of Facts and Procedural History set forth in Plaintiffs-Appellants' brief.

ARGUMENT

I. NEW JERSEY'S RESPONSE TO STATE AND LOCAL GOVERNMENT INVOLVEMENT IN DISCRIMINATION DEMONSTRATES THE STATE'S RESPONSIBILITY FOR FOSTERING SEGREGATION IN PUBLIC SCHOOLS

New Jersey's highly segregated residential communities and school districts are the result of multiple factors, including the State's lengthy history of sanctioning slavery and, subsequently, racial discrimination. The State's approach to racial equality has been one of contradictions. For example, New Jersey did not abolish slavery until 1866. Yet, only fifteen years later, New Jersey became one of the earliest states to pass legislation prohibiting *de jure*

racial segregation in public schools.³ The tension embodied in those two facts has persisted over time. While the State has attempted to enshrine ideals of desegregation and equality into its Constitution and laws, it has also enabled and directed segregation for many New Jersey residents through discriminatory law and policy. New Jersey's deep-seated and enduring legacy of racial discrimination has prolonged segregation and, in many instances, impeded desegregation, both in residential communities and in the public education they provide.⁴

A. 1787-1866: A Late Adopter of Emancipation

When New Jersey became the third state to ratify the nation's Constitution in 1787, it was a slaveholding state. Enslaved people comprised roughly six percent of the State's population in 1790.⁵ The Gradual Abolition Act of 1804 declared children born to enslaved mothers after July 4, 1804 to be free, but only after serving as indentured servants until age 21 (for women) or 25 (for men). Thereafter, New Jersey's population of enslaved individuals slowly declined

³ See Giles R. Wright, *Afro-Americans in New Jersey: A Short History* 50 (1988) (Aa8).

⁴ Throughout this brief, *amici* focus on the particular ways in which residential and educational segregation has impacted Black New Jerseyans. This focus is due to space limitations and is not meant to diminish the experience of Latino and non-White populations in New Jersey.

⁵ Among the State's population of 183,609 in 1790, 11,397 people were categorized as "Slave" and another 2,761 as "Free Black" (roughly 2% of the State's population). See Christopher N. Matthews, *Appendix A: Population Tables* (July 2019), montclair.edu/anthropology/wp-content/uploads/sites/36/2021/06/Slavery-in-NJ-Lit-Rev-Appendix-A-Population-Tables_Remediated.pdf (Aa26). Records indicate that Bergen, Somerset, Monmouth, Middlesex, Hunterdon, and Essex counties had the highest populations of enslaved people. *Ibid.*

from its height of 12,422 in 1800 to 18 in 1860.⁶ New Jersey was the last Northern state to start the abolition process. It was also the last Northern state to adopt the Thirteenth Amendment in 1866 (after initially refusing to ratify it in 1865), at last putting an end to this chapter in its history.⁷

B. 1867-1900: Following the Civil War, New Jersey's Black Population Grows Rapidly

Following the Civil War, many Black Americans sought to escape violence and repression by leaving the South in search of better social conditions and economic opportunities. Between 1870 and 1900, the Black population in New Jersey more than doubled, from 30,658 to 69,844, with newcomers joining emancipated New Jerseyans and their descendants.⁸ Those that settled in New Jersey primarily settled in major cities where they could find low-wage work, such as Camden, where between 1870 and 1880 the Black population increased ten-fold, and Newark, where, in that same period, the Black population increased five-fold.⁹

Contemporaneous State laws, including its early prohibition of *de jure*

⁶ Montclair State Univ., *Part 6 – Slavery, Freedom, and Citizenship, 1804 – 1860*, montclair.edu/anthropology/research/slavery-in-nj/part-6 (last visited Feb. 12, 2026) (Aa29–43).

⁷ See Geneva Smith, *Legislating Slavery in New Jersey*, Princeton & Slavery Project, slavery.princeton.edu/stories/legislating-slavery-in-new-jersey (last visited Feb. 12, 2026) (Aa48–57); see also G. Wright, *supra* note 3, at 29 (Aa2).

⁸ See G. Wright, *supra* note 3, at 79 (Aa21).

⁹ See *id.* 45–46 (Aa3–4); U.S. Census Bureau, *Population by Race, Sex, and Nationality* 401 (1880), census.gov/library/publications/decennial/1880/vol-01-population/1880_v1-13.pdf (Aa46) (showing increase from 826 to 8,579 in Camden and from 1,780 to 8,811 in Newark).

segregation in public schools, purported to establish civil rights protections for all citizens. Such laws included legislation from 1881 that, on paper, prohibited school segregation, but the State often did not enforce these laws.¹⁰ Additionally, the State weakened some key protections through subsequent action, such as taking steps to limit private enforcement of the nominally protective laws.¹¹ Ultimately, laws did little to protect Black New Jersey residents from the residential or educational segregation that came to define the State's communities.

C. 1900-1940: New Jersey's Black Population Continues to Grow and Jim Crow Moves North

In the early 1900s, as part of the first Great Migration, New Jersey's Black population continued to grow, nearly tripling in size between 1900 and 1930 from 69,844 to 208,828.¹² Individuals and families moving to New Jersey from other states accounted for most of this population growth, with over half of the Black Americans living in New Jersey in 1910 having been born outside of the State.¹³ World War I, in particular, was a pivotal moment for Black Americans.

¹⁰ L. 1881, c. 149. *See* G. Wright, *supra* note 3, at 54 (Aa12); An Act to protect all citizens in their civil and legal rights, L. 1884 c.219; L. 1917 c.106.

¹¹ L. 1917 c.106 (revising the 1884 Act so as to discourage lawsuits); *see also* G. Wright, *supra* note 3, at 54 (Aa12) (describing the effect of the 1917 legislation).

¹² *See* G. Wright, *supra* note 3, at 79 (Aa21).

¹³ For instance, in 1910, over 51,000 of New Jersey's Black population of 89,760 had been born in other states. *See* G. Wright, *supra* note 3, at 45, 79 (Aa3, 21).

The war effort created demand for their labor in northern industrial cities that manufactured armaments and opened the door for many to enter better-paying, higher-skilled jobs, including jobs associated with unions.¹⁴ During this period, New Jersey emerged as one of the most popular destinations for Black Americans, with the Black populations in Newark and Trenton, for instance, nearly doubling between 1910 and 1920.¹⁵ However, following the war, many employers shut Black Americans out of the well-paying jobs they had moved to seek, leading Black workers to find employment as laborers, deliverymen, dressmakers, and domestic servants, while trade unions across the country excluded them from the skilled crafts.¹⁶

As Black Americans moved into its major cities, New Jersey became an early adopter of zoning regulations, enacting various zoning enabling acts beginning in 1917.¹⁷ In 1924, shortly after the recently created national zoning committee published a national zoning standard,¹⁸ New Jersey enacted a zoning

¹⁴ See G. Wright, *supra* note 3, at 54–55 (Aa12–13).

¹⁵ Larry A. Green & Lenworth Gunter, *Unit 9 World War I and the Great Migration, 1915-1920*, NJ State Library (2003), njstatelib.org/research_library/new_jersey_resources/highlights/african_american_history_curriculum/unit_9_world_war_i/ (Aa58–63) (“Newark’s black population [rose] from 9,475 in 1910 to 16,977 in 1920, and Trenton’s from 2,581 in 1910 to 4,315 in 1920.”).

¹⁶ G. Wright, *supra* note 3, at 50 (Aa8).

¹⁷ Newman F. Baker, *Zoning Legislation*, 11 Cornell L. Rev. 164, 176 (1926) (Aa65) (detailing the early history of New Jersey zoning regulations).

¹⁸ As municipalities across the country continued to develop after World War I, the U.S. Department of Commerce established the basic foundation for zoning and planning, first by

enabling act following that standard model.¹⁹ Zoning regulations enacted by municipalities throughout the 1920s pursuant to state authorization influenced who could and did live where.²⁰ The majority of the State’s municipalities took advantage of their freedom to restrict land use. Their actions, at a time when racial disparities in income, employment opportunities, and access to credit were pervasive, all but ensured that Black New Jerseyans would be locked out of opportunities for upward mobility. And though segregative occupancy policies for public housing tended to fall away after the enactment of the civil rights statutes of the 1960s, exclusionary zoning ordinances remained in place in many municipalities even into the twenty-first century.²¹

With the State’s blessing, local governments took other actions that were

establishing a committee on zoning in 1921 and, in 1924, issuing the Standard State Zoning Enabling Act (the “SZE”). The SZE was inflected with intentional racial discrimination, both as a result of the influence of trade associations that explicitly embraced discrimination, and because of the way in which the adoption of this type of zoning represented a pivot to achieve the intent of the racial zoning struck down in *Buchanan v. Warley* while skirting legal infirmity. See generally Michael Kim, *Exclusionary Economic Zoning: How The United States Government Circumvented Prohibitions On Racial Zoning Through The Standard State Zoning Enabling Act*, 48 J. Legis. 124, 129–38 (2021) (Aa67–76) (describing how the SZE intentionally circumvented Supreme Court precedent regarding racially discriminatory zoning).

¹⁹ See Newman F. Baker, *Zoning Legislation*, 11 Cornell L. Rev. 164, 176 (1926) (Aa65); see also U.S. Dep’t of Commerce, *A Standard State Zoning Enabling Act, Advisory Committee on Zoning*, (1926) (Aa77–94) (including New Jersey in a list of states that had adopted the SZE by 1925).

²⁰ See Theodora Kimball, *A Brief Survey of City Planning Reports in the United States, 1921*, 12 Landscape Architecture Mag. 112 (1922), [jstor.org/stable/44659586](https://www.jstor.org/stable/44659586) (Aa95–99) (noting zoning ordinances in West Orange, Cliffside Park, and Jersey City, New Jersey).

²¹ See Noelle van Baaren, *The Persistence of Exclusionary Zoning in New Jersey*, Rutgers Ctr. on L., Ineq., & Metro. Equity (2013), clime.rutgers.edu/publications-filtered/the-persistence-of-exclusionary-zoning-in-new-jersey (Aa100) (describing how modern zoning ordinances that control housing density function as exclusionary zoning ordinances).

designed to segregate Black residents. Municipally chartered public housing authorities determined the location and occupancy of public housing in order to further segregation within communities by making certain public housing projects only available to White families and others only available to Black families.²² For example, the Camden Housing authority ensured that public housing built in Camden in the 1940s and 1950s remained strictly segregated.²³

It took decades for the New Jersey Legislature and courts to begin to enact and enforce laws against this kind of residential segregation.²⁴ Along the way, State-enforced private law proved to be another significant obstacle to racial integration. Indeed, until the U.S. Supreme Court's decision in *Shelley v. Kraemer* in 1948, restrictive covenants prohibited Black New Jerseyans from purchasing, renting, or occupying homes in the many municipalities and subdivisions across the state where such deed restrictions were ubiquitous.²⁵

²² See, e.g., *Seawell v. MacWithey*, 2 N.J. Super. 255, 258–61 (Ch. Div. 1949) (striking down the City of East Orange's attempt to segregate its veteran housing program on the basis of race), *aff'd in part, rev'd in part*, 2 N.J. 563 (1949).

²³ See Howard Gillette, Jr., *Camden After the Fall* 71–72 (2006) (Aa107–08) (describing segregated projects in Camden); see also *Taylor v. Leonard*, 30 N.J. Super. 116, 120 (Ch. Div. 1954) (holding the Housing Authority of the City of Elizabeth liable for segregation in public housing projects).

²⁴ See, e.g., *Levitt & Sons, Inc. v. Div. Against Discrimination in State Dep't of Ed.*, 31 N.J. 514 (1960) (holding that the New Jersey Division Against Discrimination had the authority to hear a suit brought by Black potential homeowners against the developer of Levittown).

²⁵ For example, prior to 1939, the municipality of Mount Ephraim inserted racially restrictive covenants to all deed conveyances. *Rich v. Jones*, 142 N.J. Eq. 215, 216 (N.J. Ch. 1948). These restrictive covenants became unenforceable in 1948 but may remain in deeds to this day. *Shelley*

In the 1930s, the notorious and damaging scheme to disenfranchise and segregate Black Americans known as “redlining” began to play a complementary role to exclusionary zoning across the country. This practice commenced with the advent of the Federal Housing Administration (FHA) in 1934 and the Home Owners’ Loan Corporation (HOLC) in 1935, both of which were created to assist Americans in being able to afford to purchase new homes and to avoid foreclosure at the height of the Great Depression.²⁶ Federal agencies, however, regularly and intentionally excluded Black Americans from the benefits provided by these programs, preventing them from accessing loans that would have allowed them to move into wealthier, Whiter communities and instead confining them to specific neighborhoods.²⁷

The direct impact of redlining by governmental agencies was to prevent Black Americans from getting home loans backed by the federal government, thus impairing racial integration. The HOLC, which employed a rating system to determine whether residents of particular neighborhoods would be eligible

v. Kraemer, 334 U.S. 1, 23 (1948) (rendering racially restrictive covenants unconstitutional); N.J. Rev. Stat. 46:15-15 (2024) (finding that racially restrictive covenants may still appear in deeds).

²⁶ See Kenneth T. Jackson, *Crabgrass Frontier* 203–06 (1985) (Aa129–32).

²⁷ See K. Jackson, *supra* note 26, at 207–13 (Aa133–39); Richard Rothstein, *The Color of Law* 64–66 (1st ed. 2017) (Aa158–60) (“In 1941, a New Jersey real estate agent representing a new development in suburban Fanwood . . . attempted to sell twelve properties to middle-class African Americans But the agency stated that ‘no loans will be given to colored developments’ Today, Fanwood’s population remains 5[%] black in a county with a black population of about 25[%].”); Nancy Ann Spiller, *Racial Segregation in New Jersey’s Public Schools: Progressive Public Policy at a Crossroads* 30–31 (Oct. 2001) (Litt.D. dissertation, Drew Univ.) (Aa166–67).

for home loans, would regularly assign majority-Black neighborhoods the lowest grade of “D” or “red.”²⁸ Evidence demonstrates that federal HOLC officials engaged in these redlining practices in close coordination with state and local officials.²⁹ This was particularly evident in New Jersey, where every majority-Black neighborhood received a “D” rating, and no neighborhood in Newark received an “A” rating.³⁰ The FHA did not insure a single mortgage in the heavily Black cities of Camden and Paterson until 1966.³¹ Likewise, HOLC maps of Black communities in Bergen, Essex, Mercer, and Union Counties were a major reason why Black families in those communities could not obtain mortgage loans from private banks.³²

²⁸ While there were White areas that were D rated, almost all Black majority neighborhoods were D rated, and those neighborhoods “were even worse than those in white D areas.” See Alan Mallach, *Redlining Maps Didn’t Affect Neighborhoods the Way You Think They Did*, Shelterforce (2024), shelterforce.org/2024/08/21/redlining-maps-didnt-affect-neighborhoods-the-way-you-think-they-did/ (Aa170–178).

²⁹ For instance, the HOLC appraisers in each community were generally well-established businesspeople from the local real estate industry. K. Jackson, *supra* note 26, at 225 (Aa151) (“[H]ousing authorities were typically made up of prominent citizens who were more anxious to clear slums and protect real-estate values than they were to rehouse the poor.”).

³⁰ N. Spiller, *supra* note 27, at 31 (Aa167).

³¹ See K. Jackson, *supra* note 26, at 213 (Aa139).

³² Interactive HOLC Map, Mapping Inequality, dsl.richmond.edu/panorama/redlining/map#loc=4/38.0448/-95.8425 (last visited Feb. 12, 2026) (Aa179). Indeed, New Jersey has recognized the racial and other biases that affect home appraisals, enacting a law nearly a century after the advent of redlining, in 2024, requiring appraisers to complete anti-bias training. Fair Share Housing Ctr., *Bill Prohibiting Home Appraisal Discrimination Signed Into Law* (2024), fairsharehousing.org/press-release/bill-prohibiting-home-appraisal-discrimination-signed-into-law/ (Aa180–81).

D. 1940-1970: New Jersey Continues to Grow and Diversify During the Second Great Migration, While Segregation Solidifies

Starting in the 1940s, African Americans from the South moved to New Jersey to meet the high demand for laborers that was driven, in part, by World War II.³³ At the same time, the discriminatory state and federal housing policies discussed above isolated Black Americans in the central cores of Newark and other major cities, while providing White Americans the opportunity to move to the suburbs and other municipalities separated from the urban cores.³⁴ Policies like the G.I. Bill further exacerbated this residential segregation, as White veterans were able to make use of the benefits provided under the law and Black veterans largely were not.³⁵

The exodus of White families and well-paying jobs from racially diverse cities led to lost property tax revenue and a corresponding loss of funding for

³³ Nat'l Park Serv., Place: Paterson, New Jersey, nps.gov/places/paterson-new-jersey.htm (last visited Feb. 12, 2026) (Aa182–83).

³⁴ See generally Noelle Van Baaren, *The Persistence of Exclusionary Zoning in New Jersey*, Rutgers Ctr. on L., Ineq. & Metro. Equity (2013) (Aa100).

³⁵ The Servicemen's Readjustment Act of 1944 (the "G.I. Bill") "provided World War II veterans with opportunities for wealth building, including stipends for low-interest loans and mortgages, unemployment benefits, and college tuition." However, these benefits were processed in a racially discriminatory manner. "[W]hile approximately 25,000 Black New Jersey men served in World War II, few were afforded the state benefits that propelled White veterans into the burgeoning middle class in newly formed suburban communities. Indeed, less than 100 'non-white' veterans in New York and northern New Jersey received any of the 67,000 mortgages offered in the region under the GI Bill." See N.J. Inst. For Soc. Just., *Erasing New Jersey's Red Lines: Reducing the Racial Wealth Gap Through Homeownership and Investment in Communities of Color* 9 (2020), njsj.org/wp-content/uploads/2023/05/Erasing_New_Jerseys_Red_Lines_Final.pdf (Aa185).

schools in those areas.³⁶ By confining Black residents to neglected urban cores, the policies and practices of the State and its municipalities thus directly affected the funding level, and therefore quality, of the schools that Black New Jerseyans could access.

In the 1960s, industrial cities in the Midwest and Northeast, including in New Jersey, began to lose the kinds of manufacturing jobs that had provided upward mobility for generations of immigrants and for some Black Americans who moved north during the Great Migration.³⁷ Some jobs relocated to suburban industrial parks in the same states, moves that were facilitated by state actors through highway construction decisions and lucrative tax incentives.³⁸ Other employers moved to the Sunbelt or overseas in search of less protective labor and employment laws, while some went away entirely due to automation.³⁹

³⁶ See N. Spiller, *supra* note 27, at 44–45 (Aa168–69); Nat’l Advisory Comm’n on Civ. Disorder *Report of the National Advisory Commission on Civil Disorders* 30–31 (1968), belonging.berkeley.edu/sites/default/files/kerner_commission_full_report.pdf?file=1&force=1 (Aa187–88).

³⁷ See Donald Scarry, *State of Emergency: New Jersey’s Industrial Decline*, NJBIZ (Nov. 11, 1992), njbiz.com/state-of-emergency-new-jerseys-industrial-decline/ (Aa205–09) (“During the 1960s, the proportion of workers in manufacturing slipped from more than 31% of the work force to just over 27%. In New Jersey, the decline was more precipitous—from 40% to just 33%.”). During the 1960s, Camden’s manufacturing base fell by 48%. H. Gillette, *supra* note 23, at 43 (Aa104). 28,000 Whites left Camden during the 1960s. *Ibid.*

³⁸ Robert Weaver, *The Suburbanization of America* 26–27 (1975), files.eric.ed.gov/fulltext/ED123303.pdf (Aa235–36) (“The suburbs received additional federal assistance in the form of massive highway building programs that made suburban housing accessible to a vastly increased job market as well as suburban shopping centers to an enlarged trade area and suburban industrial parks to enlarged labor markets.”). In Camden, “an interstate highway destroyed some 3,000 low-income housing units from 1963 to 1967.” R. Rothstein, *supra* note 27, at 129 (Aa162).

³⁹ G. Wright, *supra* note 3, at 72 (Aa19).

Stymied by rampant housing discrimination and having had fewer opportunities to build wealth while manufacturing jobs were still readily available, Black families did not have the same chance to relocate to new suburban job centers.⁴⁰ The combination of economically mobile White families leaving cities for suburban job opportunities with Black families not having the opportunity to relocate and having less earning potential where they remained contributed to the evisceration of city tax bases.⁴¹

This confluence of circumstances helped fuel civil unrest, including uprisings in Newark, Jersey City, Paterson, Trenton, New Brunswick, Plainfield, and Perth Amboy.⁴² These uprisings further accelerated the cycles of White flight and disinvestment in Black and Latino neighborhoods that were already in motion.⁴³ In some cities, racial tensions were extremely high. For instance, escalating tensions in Newark led to a heavy police and National Guard presence in July 1967.⁴⁴ Over the course of several days, clashes between law

⁴⁰ Raymond Mohl, *The Interstates and the Cities: Highways, Housing, and the Freeway Revolt, Poverty & Race* Rsch. Action Council at 24–25 (2002), prrac.org/pdf/mohl.pdf (Aa269–70).

⁴¹ Nat’l Advisory Comm’n Rep., *supra* note 36, at 30–31 (Aa187–88) (discussing Newark: “Whoever was able to move to the suburbs, moved.”).

⁴² *Id.* at 30–46 (Aa187–203) (describing instances of civil unrest throughout New Jersey in the 1960s).

⁴³ See, e.g., Colleen O’Dea, *Newark Before the Comeback: A City Marked by White Flight, Poor Policy*, N.J. Spotlight News (Sep. 4, 2019), njspotlightnews.org/2019/09/19-09-02-newark-before-the-comeback-a-city-marked-by-white-flight-and-poor-policy/ (Aa282–92) (discussing White flight from Newark both prior to and following the 1967 riots).

⁴⁴ Nat’l Advisory Comm’n Rep., *supra* note 36, at 32–38 (Aa189–95) (describing days of riots and police presence in Newark).

enforcement and the community led to 23 deaths: a White detective, a White firefighter, and 21 Black New Jerseyans.⁴⁵

These uprisings did not bring an end to segregation. The Court’s need to revisit *Mount Laurel* several times in the decades since, *see infra* Point III, is *prima facie* evidence that residential segregation is not a thing of the past, and the segregative effects of discriminatory zoning ordinances and redlining practices are still visible today.⁴⁶ The reality is that many Black and Latino communities remain, by design, overwhelmingly segregated and resource-deprived.

II. NEW JERSEY LEGISLATION HAS TURNED RESIDENTIAL SEGREGATION WITHIN SMALL, FRAGMENTED MUNICIPALITIES INTO EDUCATIONAL SEGREGATION

In New Jersey, by law, public school attendance is a function of residence. Thus, the same factors that have long contributed to residential segregation have a corresponding effect on school segregation.⁴⁷ There is also a long history of the State permitting wealthier and Whiter communities to splinter off to avoid

⁴⁵ *Id.* at 38 (Aa195).

⁴⁶ *See, e.g.,* Consent Order, *United States of America v. OceanFirst Bank, Nat’l Ass’n*, 3:24-cv-09248-RK-JTQ (D.N.J. Oct. 1, 2024) (Aa293–321) (approving a consent order in which a bank admitted to engaging in illegal redlining by discriminating against majority Black and non-White areas).

⁴⁷ *See* Tim Evans, *School Segregation in N.J. Is Not an Accident*, New Jersey Future (Oct. 11, 2023), njfuture.org/news/school-segregation-in-nj-is-not-an-accident/ (Aa322–24) (explaining how “[s]egregated schools are born from segregated communities”).

sharing space—including in public schools—with the residents of nearby racially and socioeconomically diverse communities. The State has not just permitted practices that have resulted in educational segregation; it has enabled and perpetuated those practices, both historically and currently, through its inflexible application of the Residency Statute, which tethers residence to school enrollment.

A. Boroughitis: New Jersey’s Fragmentation into Hundreds of Municipalities

The story of residential segregation in New Jersey—and thus of the educational segregation that has played out between municipal borders—cannot be told without first conveying how borders are created within the State. Although one of the smallest states in the country by area, New Jersey is partitioned into more than 500 small, sub-county municipalities. These municipalities provide basic services to residents—including, of particular note, the educational services offered by school districts.⁴⁸ The system of small municipalities, each with significant power conferred by the State, and each with responsibility for running and funding their own schools, has created incentives for wealthier municipalities to establish zoning laws and other practices that

⁴⁸ See Tim Evans, *School District Fragmentation and Residential Segregation*, New Jersey Future (Nov. 9, 2020), njfuture.org/research-reports/school-district-fragmentation-and-residential-segregation/ (Aa325–31) (“New Jersey’s public school landscape is particularly fragmented—it averages 28 school districts per county, the most of any state.”).

exclude residents who are disproportionately poorer and non-White. The State's choice to enable these unusually small and homogenous municipalities has both created and reinforced racial segregation between municipalities, and thus between school districts.⁴⁹

New Jersey's history of municipal fragmentation dates back to the early nineteenth century.⁵⁰ As the State grew, it was unable to fund road maintenance, which resulted in counties, and in turn, towns, taking on that obligation and expense.⁵¹ When conflicts arose regarding the obligation to pay for such local needs, townships often partitioned into even smaller districts to protect their own assets and provincial interests.⁵² Continuing into the mid-nineteenth century, commuter suburbs came into being along the railway lines between

⁴⁹ See *ibid.* ("If a fragmented system of public education creates both the incentive and the means to exclude households with lower incomes . . . it should not be surprising if such practices also serve to exclude certain racial minorities, given racial disparities in household income."); see also Greg Flaxman et al., *A Status Quo of Segregation: Racial and Economic Imbalance in New Jersey Schools, 1989-2010*, Civ. Rts. Project at 29 (2013) (Aa333) (noting that the highly uneven distribution of racial groups in New Jersey schools is likely due to home rule).

⁵⁰ See Andrew J. Bruck & H. Joseph Pinto III, *Overruled by Home Rule: The Problems with New Jersey's Latest Effort to Consolidate Municipalities*, 32 Seton Hall Legis. J. 287, 304–15 (2008) (Aa351–62) (describing the origins of fragmentation in New Jersey townships).

⁵¹ *Id.* at 306–07 (Aa353–54) ("As the state grew in the early 1800s, farmers needed well-kept roads to bring their goods to markets The responsibility fell to the counties, which in turn delegated the responsibility to the towns. Starting in 1818, the towns divided their territory into 'road districts' and appointed residents to oversee individual districts.").

⁵² *Id.* at 307 (Aa354) ("As conflicts increased, it was often easier to partition a township along district lines than it was to resolve . . . taxation issues"); *id.* at 314 (Aa361) (legislative approval for incorporation benefited "wealthy residents with political connections, and consequently, most of the municipalities created between World War I and the Great Depression . . . incorporated to ensure that African-Americans and immigrants did not move in.").

New York and Philadelphia, creating what are known today as “doughnut hole” communities: wealthier, small commuter suburbs inside larger, more rural towns whose residents frequently had divergent priorities for the provision of public services.⁵³ The commuter suburbs in the nineteenth century often incorporated into their own municipalities or boroughs, helping insulate themselves from the responsibility to fund schools in neighboring communities.⁵⁴

The Legislature’s enactment of the “Borough Acts” of 1878 and 1882 further accelerated this trend, allowing any area not exceeding four square miles (later reduced to two square miles) and 5,000 people (later reduced to 3,000 people) to introduce a referendum to incorporate as its own borough.⁵⁵ A large number of New Jersey communities took advantage of the Borough Acts to create their own miniature municipalities that insulated themselves from neighboring communities, thereby making themselves functionally independent with respect to school funding.⁵⁶

As the State divided itself into smaller and smaller municipalities through the creation of boroughs and other small communities, the number of school

⁵³ See *id.* at 308, 310–11 (Aa355, 357–58); see also Alan Karcher, *New Jersey's Multiple Municipal Madness* 80–81 (1998) (Aa403–04).

⁵⁴ See Bruck & Pinto, *supra* note 50, at 310–11 (Aa357–58).

⁵⁵ L. 1878, c. 260; L. 1882, c. 47; see Bruck & Pinto, *supra* note 50, at 311 (Aa358) (explaining the effect of the Borough Acts of 1878 and 1882).

⁵⁶ See Bruck & Pinto, *supra* note 50, at 312 (Aa359).

districts outpaced even the number of municipalities, and townships often contained more than one school district.⁵⁷

In an apparent attempt to target intra-municipal wealth disparities in schools that existed even then, the New Jersey legislature passed the Township School Law of 1894 (the “Township School Law”), which mandated each township could only have one school district within its borders.⁵⁸ Section 24 of the Township School Law, however, created a gigantic loophole, providing that “each city, borough, and incorporated town shall be a school district, separate and distinct from the township school district.”⁵⁹ Section 24 thus undermined the Township School Law’s overarching goal by authorizing cities, boroughs, and incorporated towns to create and maintain their own school districts that were separate from the standard township school district.⁶⁰

Once boroughs and other micro-municipalities took advantage of Section 24 of the Township School Law, in many counties school districts effectively

⁵⁷ See *ibid.* (documenting the beginnings of “boroughitis”).

⁵⁸ L. 1894, c. 335, § 13 (“[T]he several school districts in each township shall be consolidated into one school district . . .”).

⁵⁹ See L. 1894, c. 335, § 24; see also A. Karcher, *supra* note 53, at 82 (Aa405).

⁶⁰ A. Karcher, *supra* note 53, at 82–83 (Aa405–06) (quoting Benjamin C. Wooster, Public Education, in *History of Bergen County, New Jersey 1630-1923*, 200, 217 (Frances A. Johnson Westervelt 1923) (explaining that the Township Law “was intended to consolidate all the districts in any township into one district under one Board of Education. . . . The richer districts were unwilling to share their funds with their neighbors and advantage was taken of the Borough Act [Section 24], which permitted portions of a township to become separate municipalities with municipal and school governments of their own”) (internal quotations omitted).

became coterminous with municipalities, no matter the form or the size.⁶¹ Thereafter, many wealthy communities took advantage of the Borough Acts by incorporating their own municipalities for the purpose of maintaining control of their own school districts, effectively refusing to share “their” tax resources.⁶²

This led directly to what scholars have termed “boroughitis,” an epidemic overabundance of boroughs and corresponding school districts, particularly in Bergen County, where 26 new boroughs incorporated in the year 1894 alone.⁶³ This rapid secession of wealthy suburbs from poorer neighboring areas continued until 1897, when lawmakers attempted to fix the problem by requiring specific legislative authorization to incorporate as a new borough.⁶⁴ Despite this restriction, wealthy, White, politically connected communities successfully continued the move toward smaller, fragmented municipalities and school districts.⁶⁵ The New Jersey Legislature provided approval of new incorporations for wealthier, more politically connected constituencies, and communities sought these incorporations in order to impose alcohol bans and zoning

⁶¹ See A. Karcher, *supra* note 53, at 82, 85–86 (Aa405, 408–09).

⁶² See *ibid.*

⁶³ See Bruck & Pinto, *supra* note 50, at 312 (Aa359); A. Karcher, *supra* note 53, at 82–83 (Aa405–06).

⁶⁴ See Bruck & Pinto, *supra* note 50, at 312 (Aa359).

⁶⁵ See *id.* at 313–14 (Aa360–61).

restrictions, while also addressing tax concerns linked to school funding.⁶⁶

This trend of severing wealthier, Whiter municipalities—and thus school districts—from ones that were poorer and less White continued through World War I.⁶⁷ Though the rate of incorporation ultimately slowed, the State was unable to reverse it.⁶⁸ Thus, New Jersey remains splintered into over 500 small, relatively internally homogenous municipalities, each with its own school district.⁶⁹

B. Some Municipalities Took Steps to Ensure Their Schools Became and Remained Segregated

Following World War I, many northern New Jersey communities

⁶⁶ See *id.* at 313 (Aa360) (discussing the Tavistock Borough’s attempt to ignore alcohol bans and noting that members of Tavistock’s Golf Course club “were among the state’s most influential residents and one in particular tapped his connections with the governor to approve the tiny [15-person] incorporation.”).

⁶⁷ *Id.* at 313–14 (Aa360–61); see also G. Wright, *supra* note 3, at 68 (Aa15).

⁶⁸ See *Booker v. Bd. of Ed. of City of Plainfield, Union Cnty.*, 45 N.J. 161, 168 (1965) (explaining “feeling[s] of racial inferiority and . . . denial of equal educational opportunities . . . may appear in intensified form when . . . *segregation in fact*, though not official policy, *results from long standing housing and economic discrimination and the rigid application of neighborhood school districting*”) (emphasis added). In *Booker*, one elementary school examined had over a 95 percent Black student population. *Id.* at 164. See also *Jenkins v. Morris Twp. Sch. Dist.*, 58 N.J. 483, 487, 507–08 (1971). In 1948, 137 of the 292 schools surveyed by New Jersey’s Division Against Discrimination enrolled exclusively either Black or White children. Albert P. Blaustein, *Public Schools Cities in the North and West: Camden and Environs*, Rep. to Comm’n on U.S. C.R. at 7 (1963) (Aa414) (“Of the 292 schools, 55 enrolled only Negroes and 82 were exclusively for whites.”).

⁶⁹ New Jersey has 564 municipalities. N.J. State League of Muns., *Types of Government in New Jersey*, njlm.org/644/Forms-of-Municipal-Government---New-Jers (last visited Feb. 12, 2026) (Aa417–19). New Jersey has 590 operating school districts. N.J. Dep’t of Educ., *New Jersey Public Schools Fact Sheet 2024-2025*, nj.gov/education/doedata/fact.shtml (last visited Feb. 12, 2026) (Aa420–21). Most of “New Jersey’s school districts are quite small and serve relatively homogenous populations.” Gary Orfield et al., *New Jersey’s Segregated Schools: Trends and Paths Forward*, C.R. Project at 31 (2017) (Aa423).

implemented segregated schools; between 1919 and 1930, the number of such schools in New Jersey increased from 52 to 66.⁷⁰ “On the eve of World War II, from Princeton south every city or town with an appreciable black population supported a dual system of elementary schools.”⁷¹ While not to the same extent as southern New Jersey, many northern New Jersey communities “reintroduced racially separate schools in response to the increase in black population.”⁷² This led to an increased number of segregated schools across the State—70 by 1935⁷³—and by 1940, “there were more segregated schools in New Jersey than at any time since the enactment of the 1881 antisegregation legislation.”⁷⁴ While Black Americans moved to New Jersey in search of something more, New Jersey was often referred to by Black leaders as “the Mississippi of the north.”⁷⁵ Notably, New Jersey was recognized as having more similarities in public education with states below the Mason-Dixon line than states above it.⁷⁶

Even when there was some level of diversity within a municipality, many municipalities permitted discriminatory behavior that ensured schools remained

⁷⁰ Marion Thompson Wright, *The Education of Negroes in New Jersey* 185 (1941) (Aa425).

⁷¹ G. Wright, *supra* note 3, at 68 (Aa15).

⁷² Davison Douglas, *Jim Crow Moves North: The Battle over Northern School Segregation, 1865-1954* 142 (2005) (Aa429).

⁷³ M. Wright, *supra* note 70, at 185 (Aa425).

⁷⁴ D. Douglas, *supra* note 72, at 142 (Aa429). The 1881 law was regularly circumvented by municipalities throughout the state. *See infra* n.78 and accompanying text.

⁷⁵ D. Douglas, *supra* note 72, at 156 (Aa430).

⁷⁶ *Id.* at 141 (Aa428).

segregated. Indeed, educational segregation was fostered by race-based school assignment policies.⁷⁷ For example, while Newark’s diversity made it prosper, its segregative actions resemble the Jim Crow South. In 1949, the Newark Board of Education initiated a policy that functionally permitted White students to transfer out of predominantly Black schools.⁷⁸

This policy directly fostered segregation in Newark’s schools.⁷⁹ Today, the Newark Public School District is only 7% White and is 91% Black and Latino.⁸⁰ For Newark schoolchildren, segregation remains their reality.⁸¹

⁷⁷ See *Hedgepeth v. Bd. of Ed. of City of Trenton*, 131 N.J.L. 153, 153 (Sup. Ct. 1944) (finding unlawful Trenton’s well-established policy of sending “all children of the colored race” to the only “school in the city where the colored children are segregated from the other children.”).

⁷⁸ Robert Culvin, *Inside Newark: Decline, Rebellion, and the Search for Transformation* 48 (2014) (Aa436) (“In 1949, the Newark Board of Education quietly initiated the practice of allowing white students to transfer from mostly black schools in the central city to schools at the periphery of the city, which remained predominately white. By 1951, just over 3,000 white pupils attended schools outside their neighborhoods. . . . [I]n 1953, some 300 white students were transferred out of Avon Avenue School, located at the border of the Central and South Wards. Ironically, when the NAACP in 1961 asked the board of education to institute a transfer program to curtail patterns of racial segregation that were spreading throughout the system, the board agreed to a very limited plan, which was too little and much too late to make a difference in the growing racial segregation of Newark public schools.”). Apart from Newark, the 1881 law was regularly circumvented throughout the State. See M. Wright, *supra* note 70, at 198 (Aa426) (“Provisions of the law of 1881 have been circumvented through the placing of schools in districts of heavy Negro concentration, and the transferring out of the district of the few white children who remained.”).

⁷⁹ N. Spiller, *supra* note 27, at 45 (Aa169). Similarly segregationist policies were also instituted in Trenton. See *Hedgepeth*, 131 N.J.L. at 153 (describing Trenton’s policy of sending Black children to a segregated school).

⁸⁰ Nicole Rosenthal, *How Segregated Is Your NJ School? See District Breakdown*, Patch (Mar. 25, 2024), patch.com/new-jersey/across-nj/how-segregated-your-nj-school-see-district-breakdown (Aa437–46).

⁸¹ See Patrick Wall, *Newark Area Has Some of the Country’s Most Segregated Schools, Study Finds*, Chalkbeat Newark (May 18, 2022), chalkbeat.org/newark/2022/5/18/23124533/newark-new-jersey-school-segregation-study/ (Aa447–51).

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

New Jersey actively fostered and enabled residential segregation, as explained *supra* in Point I. The State has transformed that residential segregation into widespread educational segregation through the Legislature’s conscious, willful choices over the last 150 years to tie school attendance to municipal residence. The State has willfully chosen to adhere to an inflexible statutory scheme that reproduces New Jersey’s residential segregation in the hallways of its public schools.

Critically, the trial court did not dispute that the current operation of New Jersey legislation does just that. The provision often referred to as the “residency statute,” enacted in 1967, shortly after *Booker*, directs that “[p]ublic schools shall be free to . . . persons over five and under 20 years of age” if that person “is domiciled within the school district.” N.J.S.A. 18A:38-1.⁸² Because school attendance is a function of residence within racially segregated municipalities, the same factors that have contributed to residential segregation—such as exclusionary zoning—have a corresponding effect on school segregation.⁸³

⁸² 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).

⁸³ See Tim Evans, *School Segregation in N.J. Is Not an Accident*, New Jersey Future (Oct. 11, 2023) (Aa322–24) (“Despite being one of the most racially diverse states in the country, New Jersey remains stubbornly segregated at the local level. . . . Segregated schools are born from segregated communities.”).

Thus, the combination of the State’s long history of choosing to enable hyperlocal, racially and economically segregated municipalities, and its decision to limit school attendance to municipal residence, is a primary cause of the educational segregation that persists today in violation of the Constitution.

III. NEW JERSEY’S HISTORY OF FOSTERING, ENABLING AND MAINTAINING RESIDENTIAL AND EDUCATIONAL SEGREGATION MAKES THE STATE LIABLE UNDER THE ANTI-SEGREGATION CLAUSE FOR THE EDUCATIONAL SEGREGATION DEMONSTRATED ON THIS RECORD

In 1947, the State adopted a new Constitution, with the approval of a large majority of voters, that included an Anti-Segregation Clause. The Anti-Segregation Clause provides: “No person shall be . . . segregated . . . in the public schools, because of religious principles, race, color, ancestry or national origin.” N.J. Const, art. I, ¶ 5.⁸⁴ This mandate prohibiting 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

⁸⁴ The product of extensive efforts by Oliver Randolph, the sole African American delegate at New Jersey’s 1947 Constitutional Convention, 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/](https://www.newjerseyglobe.com/trailblazer/trailblazer-assistant-u-s-attorney-oliver-randolph-4/) (Aa452–55), and following vigorous debate among the delegates, see 1 Proceedings Record, 1947 N.J. Constitutional Convention at 332, 452, 596 (Aa457–59), the Anti-Segregation Clause was adopted by the Convention, *id.* at 642 (Aa460) (adopted by a vote of fifty-one to eighteen).

N.J. 161, 168 (1965). The State's deliberate fostering and enabling of residential and educational segregation is thus not necessary for a finding of liability under the Anti-Segregation Clause. But neither is it irrelevant.

Today, more than 60 years after the Supreme Court's holding in *Booker*, large numbers of students in New Jersey public schools are still educated in highly segregated environments because of the State's history of housing discrimination and its 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 located near wealthier, Whiter districts.

This educational segregation is driven by the twin forces explained above. First, New Jersey is residentially segregated, a circumstance arising from socio-economic factors, private discrimination, and the State's long history of fostering and enabling such residential segregation. *See supra* Point I.

Second, the State has affirmatively chosen to enact legislation that entrenches residential segregation into educational segregation. *See supra* Point II. It made the willful choice to enable the creation of 564 distinct and often small municipalities, effectively insulating wealthier and Whiter municipalities from the obligation to educate and to fund schooling for poorer and disproportionately non-White children. The State enacted a Residency Statute,

N.J.S.A. 18A:38-1, that, as a practical matter, mandates that students attend the school district in the often-segregated municipalities in which they reside. And it has affirmatively chosen to maintain the rigid mandates of that system for more than 60 years despite the obvious and inevitable educational segregation that has resulted.

This case presents the question of whether the Anti-Segregation Clause prevents the State from maintaining, unmodified, a legal regime that imposes residency-based school attendance, a regime that the State has long known results in stark unconstitutional educational segregation and that it knows will continue to cause educational segregation unless and until that law is modified.⁸⁵ 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—particularly where, as here, that segregation is in part a product of the State’s own making—and, ultimately, to take reasonably feasible steps to counter that segregation. Summary judgment as to liability is thus fully warranted on this record.

⁸⁵ 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).

This case presents the next step in forging a path toward justice, complementing the constitutional guarantees recognized in *Mount Laurel* and *Abbott*. In those cases and their progeny, the Supreme Court has held that the Constitution requires municipalities to plan for their fair share of regional housing need at all income levels, thereby overcoming significant obstacles to racial and economic integration, and dictates equal access to a thorough and efficient education. This case furthers the integration and equality demanded by the Constitution by ensuring that our public schools are not only adequately funded, but racially integrated. Indeed, absent judicial recognition of the mandate imposed by the Anti-Segregation Clause, a majority of New Jersey schoolchildren will continue to be educated in segregated classrooms.

A. The Anti-Segregation Clause Prohibits the State from Maintaining an Inflexible Residency Rule Effectively Dictating Segregated Schools

The Anti-Segregation Clause applies whether the educational segregation is intentional, or, as here, is the consequence of the State's choice to transform long-standing residential segregation into educational segregation by maintaining an inflexible application of the Residency Statute. *See Booker*, 45 N.J. at 168.⁸⁶

⁸⁶ The Legislature has authorized various school choice programs, *see* Summary Judgment Order at 11, but those programs as presently implemented have not meaningfully remedied educational

Prohibiting segregation in public education has been a foundational precept of New Jersey law for nearly 150 years, long before it was prohibited by the New Jersey's 1947 Constitution and by the United States Supreme Court in *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).⁸⁷ In 1881, the State mandated that “no child . . . shall be excluded from any public school in [New Jersey] on account of his or her religion, nationality or color.” L. 1881, c. 149, § 1.⁸⁸ In 1947, the State further demonstrated its commitment to educational equality by incorporating the Anti-Segregation Clause into its Constitution—the first of its kind in any state constitution.⁸⁹ Yet that commitment has not

segregation. An appropriate remedy might well include expansion of such programs by the Legislature, or an expansive interpretation of those programs by the Department of Education or judiciary in light of the Anti-Segregation Clause, but that is not before the court.

⁸⁷ See *Booker*, 45 N.J. at 173–74 (“[The] State’s policy against racial discrimination and segregation in the public schools has been long standing and vigorous”); 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 and the decision in the *Pierce* case”); see *State ex rel. Pierce v. Union Dist. Sch. Trs.*, 46 N.J.L. 76, 78–79 (Sup. Ct. 1884) (finding the refusal to admit a mixed-race child to a public school was illegal”). The 1881 law was enacted in response to Fair Haven school officials’ refusal to allow Black students to attend the White school following a fire that destroyed the Black school. The N.Y. Times, *Burning of a School House: Discontented Colored People in a New-Jersey Town* (Feb. 26, 1881), timesmachine.nytimes.com/timesmachine/1881/02/26/98913028.pdf (Aa464–65); The N.Y. Times, *The Race War at Fair Haven: The White School Closed to Prevent the Admission of Colored Children* (Mar. 23, 1881), nyti.ms/3OfRK0H (Aa466–67).

⁸⁸ See also *Jenkins v. Morris Twp. Sch. Dist.*, 58 N.J. 483, 495–96 (1971) (“Since 1881 there has been explicit legislation declaring 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 have been stricken judicially.”).

⁸⁹ 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).

prevented New Jersey from becoming one of the most educationally segregated states in the country.

The history explained above, in conjunction with the established legal principles explained below, demonstrate the State’s liability as a matter of law and the propriety of entering partial summary judgment. This record establishes what Plaintiffs have termed “statewide liability,” *see* Pb25, a term of art that the trial court and the State have misunderstood in this case.

What Plaintiffs sought to establish—and what the record establishes as a matter of law—is this: The State is the responsible party for the educational segregation that exists in numerous districts throughout the State. The State’s responsibility arises in large part from its choice to continue to inflexibly apply the Residency Statute and transform residential segregation into educational segregation. Record evidence establishes that this choice has resulted in educational segregation across, at a minimum, the 23 districts and eight counties that Plaintiffs identified as intensely segregated.⁹⁰ As the trial court found, even

⁹⁰ *See* Pb25–27 ((1)“Plaintiffs . . . alleged and proved that the State was neglecting its legal obligations to prevent and remedy segregation, and knowingly enforcing laws [*e.g.*, the Residency Statute] that perpetuated segregation, in numerous places throughout the State”; (2) demonstrated that “only the State . . . had the obligation and powers necessary to remedy such extensive segregation”; and (3) introduced uncontested record evidence demonstrating that the State had failed to do so in “the 23 districts Plaintiffs identified were intensely segregated,” both in an absolute sense and in comparison to neighboring districts.); *id.* at 28–30 (explaining the scope of partial summary judgment that Plaintiffs actually seek).

beyond the 23 intensely segregated 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.’” Pa41–42. The trial court, however, misconstrued “statewide liability” to require a showing of “statewide unconstitutionality, across all districts, across all regions.” *Id.* at 53.

But Plaintiffs did not and do not advance that all-or-nothing proposition. Plaintiffs demonstrated the State’s liability under Anti-Segregation Clause precedent as to the claim they actually advance: 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.” *Id.* at 52–53. 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.” *Id.* at 54. On this record, those districts unquestionably include the 23 intensely segregated districts, and also include the nearby districts that are disproportionately White and wealthy, also 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).

At least one other similarly situated jurisdiction has 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. Sup. Ct. 1996). *Sheff* held that a provision in Connecticut's constitution prohibiting 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 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.⁹¹ Connecticut has since taken major steps to ameliorate the racial inequality that plagued its public school systems,

⁹¹ “[T]he plaintiffs challenge the failure of the legislature to address continuing unconstitutional inequities resulting, de facto, from . . . State law set[ting] 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 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. “The state had ample notice of ongoing trends toward racial and ethnic isolation in its public schools,” *id.* at 1280, thus Connecticut’s failure to act adequately to ameliorate the educational segregation caused by inflexible application of its version of a residency statute “requires the state to take further remedial measures,” *id.* at 1281.

and the benefits of those positive changes have been palpable across the state.⁹²

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. And that is so even if the educational segregation is unintentional and is in part driven by factors for which the State is not responsible: such as, like here, socio-economic factors; 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 unintentional racial imbalance should be solved). Those factors do not absolve the State of liability for the direct consequences of its inflexible application of the Residency Statute despite its full awareness of the educational segregation the State causes.

Second, the Anti-Segregation Clause is violated when governmental units

⁹² *See* ACLU, *Sheff v. O’Neill*, aclu.org/cases/sheff-v-oneill (last visited Feb. 12, 2026) (Aa527–29) (These programs include allowing “students to transfer to suburban or urban districts, inter-district magnet and Lighthouse schools intended to draw students to residentially segregated districts, as well as part-time inter-district exchange programs.”); L. Def. Fund, *Agreement Reached in Connecticut School Desegregation Case*, (Jan. 10, 2020), naacpldf.org/press-release/agreement-reached-in-connecticut-school-desegregation-case/ (Aa530–31) (These programs are actively making a difference in the Hartford community—“over 44% of Hartford’s students attend a magnet or Open Choice school.”)

make willful choices to engage in conduct that meaningfully increases educational segregation or impedes educational integration. And that is so whether that governmental choice occurs within a municipality or district, between neighboring districts, or, as in this case, through the state-wide mandate dictating that all districts must restrict school attendance to residents of the municipality. *See Jenkins*, 58 N.J. at 500–01 (requiring solutions that crossed district lines). After six decades, the State is not a passive observer helpless to address the consequences of its action and inaction that enabled and then maintained educational segregation. The State’s culpability is not necessary for it to be responsible to address *de facto* segregation, whatever its cause. But that culpability highlights the propriety and necessity of finding the State liable for the educational segregation proven on this record.

The State’s knowing and willful decision to maintain the inflexible application of the Residency Statute is a choice justifying legal responsibility, as it was in *Sheff*. The State has made the choice to maintain its scheme despite knowing that doing so has caused substantial educational segregation and despite knowing that this educational segregation will continue unabated unless and until the State takes affirmative responsibility for uprooting the educational segregation it has fostered and enabled. The Anti-Segregation Clause requires nothing less.

B. Enforcement of the Anti-Segregation Clause Complements and Completes New Jersey’s Constitutional Commitments of 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 New Jersey’s residents are granted under our Constitution. The claims of educational segregation raised in this case complement the rights to socio-economic integration in housing in the *Mount Laurel* line of cases and of educational inequality in the *Abbott* line of cases.⁹³

1. Mount Laurel Furthers Socioeconomic Integration in Wealthier—and 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 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

⁹³ *Cf.* Pb53 (“[T]he principle that statewide violations of constitutional rights must be vindicated, notwithstanding the complexities of a remedy or the fact that remedies would encompass numerous municipalities, is exemplified by the *Mount Laurel* and *Abbott* line of cases.”); *id.* at 53–54 (explaining the relevance of those cases for determining the existence of liability and the proper scope of remedy).

to ensure that wealthier municipalities do not fence out low- and moderate-income people from their borders.⁹⁴

Mount Laurel I challenged a zoning regime that permitted only detached single-family homes, “the most expensive type of quarters,” thereby entirely excluding poorer, and disproportionately Black and Latino, families from residing in the Township.⁹⁵ The Court recognized that this issue was not limited to the Township of Mount Laurel.⁹⁶ It recognized that this problem existed in wealthier municipalities throughout much of the State and, in handing down *Mount Laurel I*, recognized that “every such municipality” has an affirmative obligation to provide its “fair share” of affordable housing.⁹⁷ This was not a matter of municipal discretion or legislative grace—it was a constitutional imperative.

When the Court handed down its first *Mount Laurel* decision, it expressed confidence that these towns would meet the constitutional mandate themselves.⁹⁸ But, when widespread noncompliance became evident, in spite of good faith efforts by some municipalities, the Court confronted a stark choice in

⁹⁴ *Mount Laurel I*, 67 N.J. at 158, 174–75.

⁹⁵ *Id.* at 159, 181–82.

⁹⁶ *Id.* at 160.

⁹⁷ *Id.* at 174.

⁹⁸ *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,” and judicial intervention was constitutionally required. *Id.* at 201.

Since then, the New Jersey Supreme Court has consistently reaffirmed and refined the *Mount Laurel* doctrine, demonstrating its enduring commitment to ensuring statewide access to affordable housing.⁹⁹ Approximately 70,000

⁹⁹ 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 state-wide 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, contingent on approval of COAH, “on the development of commercial and non-inclusionary residential property as inclusionary-zoning measures to provide lower-income housing”); *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,” dissolving the Fair Housing Act’s exhaustion requirement, and restoring the judiciary as the forum of first resort for *Mount Laurel* claims).

affordable homes were built in suburban New Jersey through *Mount Laurel* from 1980 to 2022. This is significant, but it falls far short of the systemic change to affordable housing that would be required to provide a comprehensive remedy to school desegregation. Furthermore, since 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.¹⁰⁰ The *Mount Laurel* line of cases thus meaningfully promotes a degree of socio-economic and racial integration as to residence in wealthier districts, but it is neither designed for nor results in an efficient remedy to the problem of school segregation.

2. *Abbott Ensures Equal Access to a Thorough and Efficient Education in Poorer, More 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 28 (later, 31) designated “special needs” school districts (the “Abbott Districts”) disproportionately composed of at-risk, low-income, and non-White students. *See Abbott by Abbott v. Burke*, 119 N.J. 287, 295 (1990) (“*Abbott II*”). These students, despite facing greater educational needs than their peers in wealthier districts, received inadequate funding to meet the constitutional standard. The

¹⁰⁰ 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).

Court therefore mandated funding parity, assuring “funding of education in poorer urban school districts at the level of property-rich districts.”¹⁰¹

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 property tax revenues, with the State failing to take responsibility despite a fundamental denial of educational rights.¹⁰² 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*.¹⁰³

The lack of funding in the Abbott Districts was the direct product of the State’s decision to assign financial responsibility to local school districts that

¹⁰¹ 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).

¹⁰² See *Abbott II*, 119 N.J. at 342.

¹⁰³ 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.”).

were dependent on 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—despite limiting the remedy to the 28 underfunded school districts. *See id.* at 385–86.

Also 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.¹⁰⁴ Though *Abbott* continues to require that the education provided in the Abbott Districts is sufficiently funded, *Abbott*, like *Mount Laurel*, is not designed for and does not result in school desegregation.

3. *Holding New Jersey Liable for Enacting 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 established constitutional jurisprudence in *Mount Laurel* and *Abbott*. Those cases implement New Jersey’s Constitutional guarantees of equity and equality, and its judiciary’s thoughtful and responsible

¹⁰⁴ *See, e.g., Abbott by Abbott v. Burke*, 136 N.J. 444, 446–47 (1994) (“*Abbott III*”) (affirming that the Quality Education Act was unconstitutional because it failed “to assure parity of regular education expenditures between the special needs districts and the more affluent districts”); *Abbott by Abbott v. Burke*, 149 N.J. 145, 152–53 (1997) (“*Abbott IV*”) (holding that the Comprehensive Educational Improvement and Financing Act failed to ensure students in special needs districts received a thorough and efficient education).

interpretation of those Constitutional rights. But those lines of cases simply do not address the harms and legal claims raised in this case as to educational segregation.

Mount Laurel takes meaningful steps to ensure, statewide, that wealthier districts take on some measure of obligation to enable residency by poorer—and disproportionately non-White—New Jerseyans. But *Mount Laurel*, by the very nature of the doctrine, provides only for limited residential, socio-economic integration, even in the wealthier districts in which it does apply. It has a correspondingly meaningful, but far from sufficient, effect on educational racial segregation in those wealthier districts. *Mount Laurel* does not, however, solve the problem of educational segregation, and especially not in poorer (and disproportionately non-White) districts that are educationally intensely segregated and present the central concern in this case.¹⁰⁵

Abbott looks to the rights of individual, poorer students in poorer (disproportionately non-White districts), ensuring that students in those districts are not harmed by New Jersey's statewide system of funding education through local property taxes. In other words, *Abbott* ensures that even if the education

¹⁰⁵ Despite the New Jersey Supreme Court's acknowledgment in the *Mount Laurel* cases that the zoning ordinances at issue disproportionately impacted Black and Latino families, the Court determined that the ordinances were unconstitutional because they discriminated based on socioeconomic status, rather than race or ethnicity. See *Mount Laurel I*, 67 N.J. at 159.

provided in those poorer districts is socio-economically and largely racially separate, at least that education is (fiscally) equal.

Though *Abbott* and *Mount Laurel* advance equality, neither is nearly enough to meaningfully address the rampant educational segregation in New Jersey's public schools, a fundamental societal inequity that the Anti-Segregation Clause forbids.

Enforcement of the rights at issue in this case completes the constitutional picture, giving life to the full scope of our Constitution's guarantee of equality and 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 segregated.

The harm to New Jersey students from a segregated educational environment is not limited to non-White students in hyper-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”). A vast number of New Jersey's students, statewide, are harmed by the inflexible application of the Residency Statute.

C. New Jersey's Historical and Ongoing Residential and Educational Segregation, and its Anti-Segregation Clause Jurisprudence, Support a Finding of State Liability for 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. But the Court cautioned that, “as a nation, we cannot afford standing by” until that solution might arise because waiting and hoping that efforts to combat discrimination will solve the problem would deny “the oncoming generation of the educational advantages which are its due.” *Ibid*.

When deciding *Booker*, the Supreme Court expressly stated that it was not yet ready to find that inflexible application of residency requirements to constrain school attendance was “*per se* [] unconstitutional.” 45 N.J. at 168–70 (emphasis added). That was because the residential segregation and thus educational segregation that then existed might, the Court explained, fade with the passage of time—but if it did not, the Court observed, inflexible application of the Residency Statute would have to yield to the Constitution: *de facto* segregation violates the Anti-Segregation Clause “when segregation in fact, though not official policy, results from long standing housing and economic

discrimination and the rigid application of neighborhood school districting” and other, similar residency requirements. *Id.* at 168.

In the six decades that have passed since *Booker*, the hopes expressed therein have been frustrated. Despite the State’s genuine and meaningful efforts to fulfill its Constitutional mandate, educational segregation remains an entrenched reality. The passage of time, and the rights existing and remedies imposed under the *Mount Laurel* and *Abbott* line of cases, have not solved and will not adequately solve the different problem of educational segregation.

This is evident through at least the 23 intensely segregated districts established as a matter of law on this record.¹⁰⁶ The infirmity 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 Court did not hold or “imply that the neighborhood school policy [p]er se is unconstitutional, but 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)). And, as this record shows, it has resulted in segregation in fact and thus must be abandoned

¹⁰⁶ Pb34.

or modified.

New Jersey has consistently expressed—if not always lived up to—a commitment to racial equality in education.¹⁰⁷ Indeed, New Jersey courts have “consistently [] held that racial imbalance resulting from *de facto* segregation is inimical to the constitutional guarantee of a thorough and efficient education.” *In re Pet. for Auth. to Conduct a Referendum on Withdrawal of N. Haledon Sch. Dist.*, 181 N.J. 161, 177 (2004).

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. *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). And liability exists under the Anti-Segregation Clause even when hypersegregation does not exist in every school within a district. *See, e.g.,*

¹⁰⁷ *See* N. Spiller, *supra* note 27, at 7 (Aa165) (citing State Board of Education Policy and Guidelines on Racial Balance (1969) and (1972); Guidelines for the Desegregation of Public Schools in New Jersey (1989)).

Booker, 45 N.J. at 164; *see also Jenkins*, 58 N.J. at 506. So, too, is the State liable for violations of the Anti-Segregation Clause arising 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 multiple districts spanning eight counties. Moreover, this record presents a compelling argument that the time has come to conclude that the entire 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 question is warranted, but even if that were not so, Defendants cannot seriously contest the State's liability for educational segregation in the 23 intensely segregated districts. And the trial court did not address that question below, instead only addressing the all-or-nothing proposition advanced by Defendants, not by Plaintiffs. Given the uncontested facts in this record, this Court should recognize that the State's choice to maintain an inflexible system tying school attendance to residency violates the Anti-Segregation Clause. That is so even if a subset of districts, through their

own extraordinary efforts or through happenstance, provide an integrated educational environment. As *Booker* recognized sixty years ago, a practice “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 all the reasons set forth above and in Plaintiffs’ briefing, *Amici* urge this Court to uphold the trial court’s factual findings but reverse that court’s denial of partial summary judgment.

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Respectfully submitted,

/s/ 

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