

# CFE REPORTS

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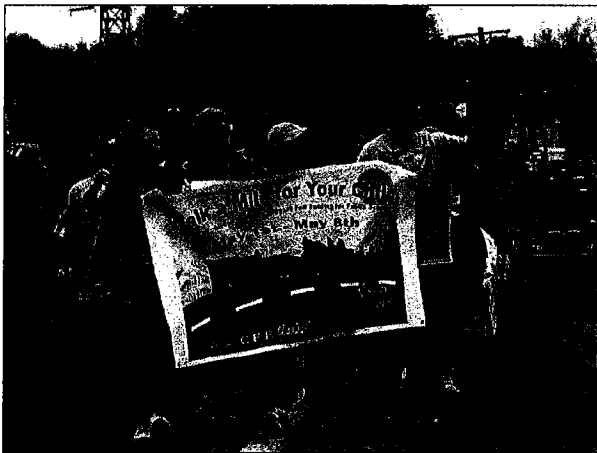
The Newsletter of the Campaign for Fiscal Equity, Inc.

May 2003

## COURT OF APPEALS HEARS ORAL ARGUMENTS IN CFE CASE

On May 8, the New York Court of Appeals heard arguments in *Campaign for Fiscal Equity v. State of New York*. At the oral arguments, CFE's attorneys asked the six judges on the State's highest court to overturn last year's intermediate appeals court ruling that held that the State is constitutionally obligated to provide only an 8<sup>th</sup>-grade level of skills to New York's public school students.

CFE Executive Director Michael A. Rebell and co-counsel Joseph Wayland of Simpson Thacher & Bartlett, a law firm that has provided *pro bono*



Assemblyman Roger Green (center) "Walks a Mile" with founder Robert Jackson and advocates Maria Behncke and Marion Bott.

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representation to CFE throughout the trial and appeals process, asked the Court to rule that the state constitution's guarantee of a "sound basic education" should be defined, at a minimum, at a 12<sup>th</sup>-grade level of skills. They also asked the Court to reinstate Justice Leland DeGrasse's January 2001 trial court decision in *CFE*, which ruled that the State's current funding system is failing to provide this requisite level of skills needed to serve competently as a voter and juror, as well as to sustain competitive employment in New York's 21<sup>st</sup>-century economy.

In arguing that the Court must step in to order funding reforms, Wayland recalled that the Governor

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## ROBERT JACKSON AND CFE SUPPORTERS WALK 150 MILES TO ALBANY

Minutes before the Court of Appeals heard oral arguments in *CFE v. State*, CFE's founder, New York City Councilman Robert Jackson, reached the courthouse steps in Albany after an historic 150-mile march from New York City. Maria Behncke, a Rochester parent and Alliance for Quality Education regional director, also marched the entire 8-day route.

In the final mile-long stretch of the walk, Jackson and Behncke were joined by a bevy of advocates, parents, public officials, and other CFE supporters, with chants of "Eighth grade is not enough! Fair funding now!" that echoed through downtown Albany's marble government buildings.

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**COURT OF APPEALS HEARS ARGUMENTS IN CFE**

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and legislature have failed for generations to remedy the inequities faced by many of the State's schools, especially those in New York City and other high-need rural and urban districts elsewhere in New York. This "sustained and systemic failure," he told the judges, is a clear violation of the state constitution's education clause and requires the Court's intervention.

The Court has clearly taken this mandate quite seriously. They set aside two hours for the oral argument—double the normal maximum time—and continued questioning CFE's lawyers even beyond that allotted time. In their questions, several of the judges expressed skepticism about the 8<sup>th</sup>-grade standard included in the June 2002 decision of the Appellate Division, First Department. One judge even acknowledged that Governor Pataki, the defendant in the State, publicly renounced this standard (which his attorneys had previously defended in court) during last year's gubernatorial campaign when he stated that New York's schools should ensure "that all children have the opportunity to acquire at least a good high school education."

Most of the two hours of questioning from the judges focused on crafting an effective, workable remedy. Chief Judge Judith Kaye asked a number of questions, followed up by other judges, about the outcomes of similar education finance litigations in other states. The Court asked Rebell for recommendations of other state court decisions to look to in developing a potential remedy in *CFE*, to which he offered the Kentucky, North Carolina, and Texas lawsuits as useful precedents.

Interestingly, the judges expressed wariness about asserting excessive judicial control over the legislature and public school system, but also seemed unwilling to defer control of defining the constitutional education standard to state or local agencies. As the *New York Law Journal* interpreted this pattern of questioning, "The Court seemed receptive to the argument that it must force the Legislature to honor its constitutional commitment...[and] with fashioning a remedy, if appropriate, that is effective, judicially restrained, respective of the separation of powers and practical."

Arguing on behalf of the State, Deputy Solicitor General Daniel Smirlock wavered in his defense of the Appellate Division's decision and on the 8<sup>th</sup>-grade standard his office has defended. Smirlock claimed both that any "particular grade in school is an empty vessel" and should not be used as a legal standard, while also contending that a "sound basic education" includes a set of skills "defined as basic competence" that is most often met by students in roughly the 8<sup>th</sup>-grade. In language mirroring the Appellate Division's decision, Smirlock said schools must provide "[t]he skills to occupy a job and not be a burden on the public fisc."

CFE is calling for the Court to order a fair, transparent, statewide education funding formula based on student need. The Court is expected to issue a ruling by term-end in June.

**HIGH SCHOOLERS TEST CIVIC SKILLS AT "MODEL SOCIETY" CONFERENCE**

On May 7, 60 high school students gathered near Albany for CFE's annual youth conference, "Model Society: My School, My Community, My Rights." The students came from six schools in the Bronx, Queens, Oxford, Schenectady, Voorheesville, and Watervliet.

The conference, held at the New York State United Teachers headquarters, marked the third year CFE has brought together students from across the state to learn about concepts raised in the *CFE* case, including school accountability and civic engagement. In small groups, students discussed "reciprocal," or shared, accountability for school success and the resources schools need to succeed.

Throughout the day, the students assumed the role of voters in a controversial mock ballot initiative on expanding national draft registration requirement to women. The students engaged in lively discussion and debate on the issue and on the role of their schools in preparing them to become informed, capable voters before casting their ballots.

For more information on CFE's future youth engagement events and activities, contact Jessica Garcia at [jgarcia@cfequity.org](mailto:jgarcia@cfequity.org).

**CFE SUPPORTERS WALK 150 MILES TO ALBANY**

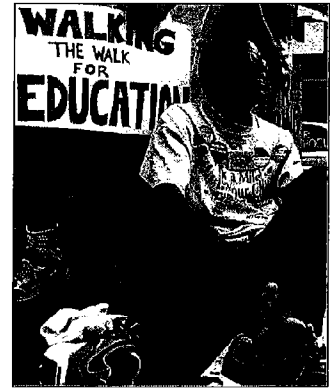
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Jackson, the lead plaintiff in *CFE*, had pledged to walk the entire route through the cities and small towns of New York State, from the Appellate Division courthouse in Manhattan to the State's highest court to convey the message that New York's children are worth fighting for and are entitled to high-quality public schools. Eight days, 150 miles, and a few blisters later, Jackson and Behncke realized their pledge, and the six judges inside the courthouse likely heard the roar of cheering supporters that greeted the walkers at the culminating rally in Albany's Academy Park.

"We walked the walk and now CFE's lawyers are going to go into the courthouse and talk the talk," Jackson said to the cheering group, broadcasting a relieved grin to the crowd while a loudspeaker blared James Brown's "I Feel Good."

The historic march, dubbed "Walk a Mile for Your Child," began on May 1 with a rally of several hundred supporters, students, parents, and political leaders at Madison Square Park in Manhattan near the Appellate Division courthouse. That day, over 100 supporters joined the northward march up Broadway through Manhattan, the Bronx, and into Westchester County. In Washington Heights, Jackson's home neighborhood, crowds of public school students gathered at nearly every block to cheer on the walkers, at one point boosted by a supportive honk from a passing subway train.

For the rest of the week, five to 20 supporters walked the 15-25 mile stretches each day, waving signs reading "150 Miles or Bust" and "Walking the Walk for Education." Advocate Marion Bott of Manhattan walked nearly the entire route; Assemblyman Roger Green also joined the march for several days.



*CFE founder Robert Jackson rests his feet at the end of Day 7 in Glenmont, NY.*

The walk route passed through a series of small rural towns, suburbs, and cities between New York and Albany, with stops in places including Peekskill, Rhinebeck, Coxsackie, Saugerties, and Glenmont. At a midday stop at Cahill Elementary School in Saugerties on Day 5, the school's students welcomed walkers with an impromptu rally, waving banners that said "Thank You for Walking a Mile."

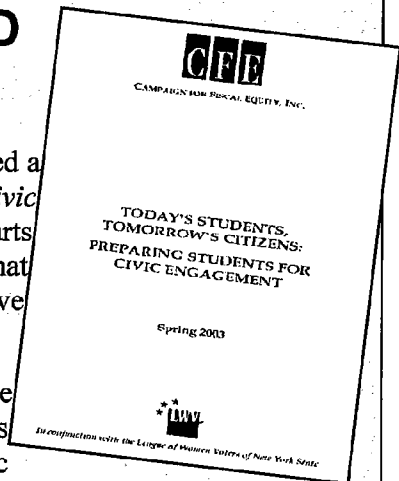
The "Walk a Mile for Your Child" march attracted a great deal of media attention. The walkers were stopped throughout the journey by radio, newspaper, and TV reporters, several who even joined the march for a few miles themselves. Links to the news coverage of the march are available on the CFE website at [www.cfequity.org](http://www.cfequity.org).

**NEW CFE REPORT: STUDENTS NEED HIGH-LEVEL SKILLS AND KNOWLEDGE FOR GOOD CITIZENSHIP**

CFE and the League of Women Voters of New York State recently released a new report, *Today's Students, Tomorrow's Citizens: Preparing Students for Civic Engagement*, which describes the strong consensus among the state courts across the country, social science scholars, and New York residents that students need high-level skills and knowledge, and core values to be effective citizens.

The social science research cited in the report was confirmed by the response of the 500 students, parents, educators, and community members who participated in eight community forums across the state on civic engagement that were sponsored by CFE and the League last fall.

The full report is available on CFE's website at [www.cfequity.org/civengreport.pdf](http://www.cfequity.org/civengreport.pdf).



## PUBLIC ENGAGEMENT ON "COSTING-OUT" CONCLUDES WITH ALBANY CONFERENCE

On May 16, 50 parents, educators, school board officials, advocates, and community members met in Albany for a conference, "Adequate Funding: Communities Speak Out on What Students Need to Succeed," sponsored by the New York Council on Costing Out (CCO). The thought-provoking meeting, held at the New York State School Boards Association headquarters, culminated a series of 13 public engagement forums held around the state in the first phase of a year-long study to determine the actual costs of an adequate education in districts throughout New York.

These costing-out forums gathered input from New Yorkers on the specific challenges faced by schools in different regions and on the programs and practices that work for students in those areas who have trouble meeting standards. Conference participants, who included representatives from each of the forums, ratified the major findings of a draft report summarizing the public engagement project. A final report, including input from the conference, will be presented to the independent research team undertaking the costing-out study.

In order to recommend a definition of an "adequate educational opportunity" to the costing-out research team, participants also debated the merits of various adequacy levels. They wrestled with the educational uncertainties, contradictions, and politics entailed in defining educational adequacy in the context of the No Child Left Behind Act.

### Key conclusions from the public engagement forums on what is needed to provide real educational opportunities to all students:

- ▶ Early childhood education is essential.
- ▶ Schools need to increase parent involvement with improved home-school communication and more structured activities for parents.
- ▶ Small class sizes are critical for younger students and all students with special needs. Class sizes should be 10-20 students in elementary school and 25 or below in high school.
- ▶ Effective, ongoing professional development and mentoring for new and experienced teachers and administrators is needed to improve instruction.
- ▶ Programs designed to provide extra time on task for low-performing students—like small-group literacy programs in the early grades—must be available to all students who need them.
- ▶ Special education students must be provided with the services they need to succeed in inclusion settings, and in many urban and rural settings are not receiving these services.
- ▶ All students must have adequate access to guidance counselors, social workers, and other sources of social and psychological support, particularly in middle and high school.



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