To be argued by:
DENISE A. HARTMAN

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : FIRST DEPARTMENT

CAMPAIGN FOR FISCAL EQUITY, INC., et al.,

Plaintiffs-Respondents,

v.

APPELLATE DIVISION
DOCKET No. 111070-93

THE STATE OF NEW YORK, GEORGE PATAKI,
as Governor of the State of New York,
and ANDREW S. ERISTOFF,
as Commissioner of Taxation and Finance
of the State of New York,

Defendants-Appellants.

REPLY BRIEF FOR DEFENDANTS-APPELLANTS

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The State Defendants submit this brief to reply to those arguments in CFE's brief that require further discussion.

ARGUMENT

POINT I

THE COURT BELOW ERRED IN FAILING TO DEFER TO THE STATE DEFENDANTS' DETERMINATION OF THE COSTS OF PROVIDING A SOUND BASIC EDUCATION IN THE NEW YORK CITY SCHOOLS

As discussed in the State defendants' main brief (pp. 55-61), the elected branches of government, not the courts, are responsible for determining the amounts, sources, and objectives of public spending for education. Accordingly, the State defendants, adopting the analysis and recommendations of the Zarb Commission, determined the amount of additional operating aid the New York City schools must receive to provide their students with the opportunity for a sound basic education. That determination should have commanded deference from the court below and the Referees. Instead, the Referees conducted, and the court below ratified, a wide-ranging, de novo, quasi-legislative inquiry into educational policy. They showed no deference to the State defendants' different but reasonable conclusions. Their results were unexceptionable as policy but indefensible as a set of constitutional mandates to be followed by the branches of government that are actually responsible for making decisions about education funding.

This error, though pervasive, is easy for this Court to correct. If it accords appropriate deference to the State

defendants' reasonable conclusions about how the necessary amount of additional operational funding is to be calculated, the Court can likewise adopt defendants' ultimate calculations and eschew a policy-making role for which the judiciary is unsuited.

Apparently recognizing the deference that courts owe to the reasonable conclusions of the elected branches of government, plaintiffs argue (Pl. Br., pp. 38-41) that this is a special case because of the State's supposed contumacy in complying with the mandate of CFE II. Preferring the Referees' conclusions to the State's, they insist that "there are no State actions to which any deference is due" (Pl. Br., p. 40). But plaintiffs' accusation of bad faith notwithstanding, the State has responded to CFE II by complying fully with the first of the Court of Appeals' directives and to some extent with the other two directives. Instead of preempting the State's efforts at compliance, the Referees and the court below should have deferred to them.

Governor Pataki's response to CFE II constitutes full compliance with the first CFE II directive -- to ascertain the cost of providing a sound basic education in New York City. The "State" can act only through its agents. As the named defendant, the State's chief executive, and the official principally responsible for devising the budget, Governor Pataki acted immediately to comply with the first directive. He appointed the Zarb Commission to study and make recommendations about the "actual cost of providing a sound basic education," 100 N.Y.2d at

930, and evaluated the Commission's findings and recommendations. Based on that analysis, the Governor concluded that, while as a matter of policy New York City schools should receive an additional $4.7 billion as part of an $8 billion statewide plan, the actual amount needed to provide a sound basic education in New York City was $1.93 billion more than the City schools received in 2002-2003, for a total of $14.55 billion annually. Plaintiffs prefer a higher number, but the State defendants' determination that an additional $1.93 billion is required to provide a sound basic education in New York City nonetheless constitutes full compliance with the Court of Appeals' first directive.

To plaintiffs, this figure was the product of "a cynical litigation-inspired manipulation" of the Standard and Poor's study. But an examination of how the two variables now at issue -- the 50% cost-effectiveness filter and the 1.35 poverty weight factor -- were adopted reflects that these variables were part of the Zarb Commission's recommendations, and that the State defendants merely followed those recommendations.

The Zarb Commission derived its recommended range of $2.5 billion to $5.6 billion in additional statewide funding from Figure 11 of the Standard and Poor's Report (R988, 1060). Figure 11 is a matrix showing this range of "spending gaps" -- i.e., the difference between actual expenditures and expenditures necessary to fulfill the constitutional mandate -- depending upon the "achievement scenario" (i.e, the desired level of student

performance) and regional cost factor that are selected. The corresponding matrix for New York City alone appears as Figure 15, which shows a range of spending gaps from $1.93 billion to $4.69 billion (R1063). The numbers in both Figures represent each scenario's "cost-effective base expenditure" (R1060, 1063). Figures 11 and 15 can be contrasted with Figures 13 and 16, which are "NOT derived from each scenario's 'cost effective' base expenditure" (R1061, 1063). As noted in defendants' main brief, Standard and Poor's used precisely the same cost-effectiveness measure used by the Board of Regents in ascertaining education costs. The Zarb Commission expressly concluded that this cost-effectiveness filter is necessary to achieve the best possible results at a reasonable cost to taxpayers (R972, 987-988). The State defendants simply accepted this conclusion in the formulation of their Reform Plan.

The Zarb Commission also adopted the 1.35 poverty weight factor, and that factor has a similarly respectable provenance. Standard and Poor's used the 1.35 factor for all its calculations, identifying it as near the low end of the range "drawn from a review of research literature concerning the coefficients that education agencies tend to use in practice" (R1057). Standard and Poor's presumably used that weighting, although not "recommending" it, because it is an acceptable and reasonable figure, yet low enough to comport with the Court of Appeals' mandate to ascertain how inexpensively a sound basic education can be provided. By directly adopting the figures in

Standard and Poor's matrix, the Zarb Commission perforce adopted the 1.35 poverty weight factor as "a reasonable place to start," with further review recommended after three years to determine if adjustments are needed (R988). The Governor in turn accepted the Zarb's Commission's recommendations.

Thus, in response to CFE II, the Governor set in motion a process that moved through Standard and Poor's analysis and presentation of a range of costs depending on a choice of variables, to the Zarb's Commission's choices and recommendations of particular variables, to the State defendants' acceptance of the Zarb Commission's conclusions about the actual cost of providing the opportunity for a sound basic education. The overall process, the methods employed, and the results arrived at were reasonable, and thus constitute compliance with CFE II's first directive.[1]

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[1]These conclusions were reflected in the legislation the Governor submitted in July 2004 to comply with CFE II. Introduced as Senate Bill 1-A, the Bill recites that in accordance with CFE II and pursuant to executive order, the Zarb Commission directed that a study be performed to ascertain the actual cost of providing a sound basic education in New York City and other school districts across the state (R1152-1153). The Bill proposed findings specifically adopting (1) the successful schools methodology; (2) the Regents achievement scenario identifying successful schools as those in which 80 percent of elementary and high school students demonstrate efficiency on Regents examinations; (3) the Commission's recommended weight factors to adjust for the increased cost of educating poor, disabled, and language-limited students; (4) the Geographic Cost of Education Index to adjust for regional cost differences; and (5) a cost-effectiveness filter that uses only the lower-spending half of successful school districts to determine the base expenditures necessary to provide the opportunity for a sound basic education (R1153). The Bill also proposed many of the non-fiscal reforms recommended by the Zarb Commission.

Plaintiffs' supposed proof that the $1.93 billion figure, reflecting the low end of the range recommended by the Zarb Commission, is no more than "litigation-inspired manipulation" betrays a confusion, reflected elsewhere in their approach, between what they desire and what is constitutionally compelled. While it is true that the State Education Reform Plan submitted by the defendants proposes $4.7 billion dollars in additional operating funds for New York City, this reflects a policy preference, not a conclusion that nothing less than $4.7 billion satisfies the constitutional mandate. The Reform Plan itself makes this clear, for it represents that the minimum additional spending of $2.5 billion statewide and $1.9 billion in New York City that the Zarb Commission concluded is a "valid determination of the cost of providing a sound basis education in New York City," whereas anything higher would constitute "a policy choice" (R953).

Plaintiffs likewise attack the $1.93 billion figure because it is not in line with the funding proposals put forth by the Regents, the City, the Assembly, and plaintiffs themselves (Pl. Br., pp. 13-14). But aside from plaintiffs' costing-out study, none of the proposals was the result of a rigorous costing-out analysis aimed at determining the minimum amount required to provide New York City students with an opportunity for a sound basic education. These other proposals instead reflect policy interests, not a constitutional minimum. Even plaintiffs' study,

as noted in defendants' opening brief (Br., p. 74), was premised on giving all students the opportunity to satisfy the rigorous Regents Learning Standards, which the Court of Appeals has already held exceed the requirements of a constitutionally adequate education. Because plaintiffs aimed higher than necessary, they produced a list of desired programs rather than a list of essential ones. Plaintiffs' methods brought them to the conclusion that more than half of the school districts deemed successful by the Regents and Standard and Poor's, and indeed by the court below, require increased funding just to provide a minimally adequate education.[2] This cannot possibly be the outcome of an inquiry that truly focuses on what is essential rather than what is desirable. The Governor's determination, by contrast, reflects the Court of Appeals' directive to ascertain the costs of a sound basic education. Because the various proposals are so grounded in policy choices, they cannot be meaningfully compared with the State defendants' proposal.

The Governor and the Legislature have agreed on legislation that constitutes partial compliance with the second and third directives of CFE II. The second directive required the State to implement measures to ensure that New York City has the resources

[2]This position also conflicts with the Court of Appeals' view that New York City's situation is unique -- a view that led the majority to reject the dissenters' concern that CFE's success in this lawsuit "will necessarily lead to a host of imitators throughout the state." CFE II, 100 N.Y.2d at 932.

necessary to provide its students with the opportunity for a sound basic education. The State has accordingly increased operational funding for New York City schools. Specifically, it provided about $300 million as additional aid for New York City schools for the 2004-2005 school year (R952) (L. 2004, ch. 53) and $320 million beyond that, or $620 million cumulatively as additional aid for New York City for the 2005-2006 school year (L. 2005, ch. 53). Assuming a 40 percent local match from New York City and no federal increase, the New York City schools will receive well over $1 billion dollars more in operating funds than they received in 2003-2004.

The Governor and Legislature have also adopted important reforms to the State's building aid program that will enhance reimbursement when the City builds, acquires or renovates facilities that permit smaller classes and add specialized learning spaces. The current statute provides for a regional cost index of 1.879 for New York City (L. 1997, ch. 436, § 36), increases the State reimbursement rate for allowable costs from 50.7 percent to 60.7 percent (L. 1997, ch. 436, § 37), reforms the State's building aid formula to provide funding for the extraordinary costs of construction in New York City (L. 2005, ch. 57, Part L, § 12), and further increases State reimbursement rate for allowable costs to 63 percent (L. 2005, ch. 57, Part L, § 12-b).

In order to comply with the third directive, the Governor and Legislature have enacted both governance reforms for the New York City district and statewide accountability reforms. The latter reforms include requirements that school districts conduct regular fiscal audits according to set standards (L. 2005, ch. 263) and that the State Comptroller periodically audit school districts across the State (L. 2005, ch. 267). These enactments are further proof that the State recognizes its obligations under the Education Article, as defined in CFE II, and has taken significant steps to meet those obligations.

POINT II

THE STATE DEFENDANTS' DETERMINATION OF THE ADDITIONAL AMOUNT OF OPERATING AID NECESSARY TO ENABLE THE NEW YORK CITY SCHOOLS TO OFFER A SOUND BASIC EDUCATION WAS REASONABLE AND SHOULD NOT HAVE BEEN DISTURBED BY THE REFEREES

A. The State Defendants' Use of the Cost-Effectiveness Filter Was Not Arbitrary and Was Supported by the Record.

The Referees' finding that the cost-effectiveness filter was "unsupported and arbitrary" is itself not supported by the Record. As discussed more fully in defendants' main brief (pp. 61-68), ample evidence justified use of the filter, which the Regents themselves rely on to calculate education costs. State Department of Education Deputy Commissioner James Kadamus testified that the Regents use this approach because the

expenditures of the lower-spending half of successful districts better represent what it costs to provide an adequate education (R2600-2601, 2606, 2610-2611). The State defendants' principal expert likewise testified that the approach is reasonable because Standard and Poor's analysis showed that the higher-spending districts produced only marginally better student performance despite spending considerably more money (R2167-2169, 2188-2189).

Evidence before Supreme Court, though not before the Referees, further supported use of the cost-effectiveness filter.[3] An affidavit of Deputy Commissioner Kadamus presented and discussed the Regents' 2005-2006 Proposal on State Aid to School Districts, which based its spending proposals on an empirical study showing that applying a cost filter to the successful schools model produces a more reasonable estimate of the base costs of providing a sound basic education. This is so because many communities in the State provide more than an adequate education (R5989-5991). As the Regents recognized, research now demonstrates what logic suggests: that considering these school districts in calculating the costs of a sound basic education will produce an overestimate of those costs.

[3]As authorized by C.P.L.R. § 4403, the court below had before it an expanded Record, including submissions by the parties and amici in connection with the motions to confirm and to reject the Referees' findings.

The Referees' contrary approach betrays a critical misunderstanding of the scheme of public education embodied in the State Constitution. The Education Article reflects the principle that local communities should have the freedom to provide an education that goes well beyond the constitutional minimum. See Paynter, 100 N.Y.2d 434, 442-43 (2003); Levittown, 57 N.Y.2d 27, 45-46 (1982). Some districts choose to do this, and it makes no sense to use their expenditures as a basis for calculating the cost of a sound basic education. Yet that is exactly what the court below and the Referees did.

Plaintiffs share this misunderstanding, for in discussing the supposed irrelevance of a cost filter to the successful school districts methodology, they selectively quote the State defendants' expert Dr. Palaich, who explained that the successful schools methodology "is based on the simple premise that any district should be able to be as successful at meeting a set of objectives as those districts currently meeting those objectives provided that every district has the same base level of funding that has been available to the successful districts" (Pl. Br., p. 24, quoting R3877). But many successful districts meet "objectives" that exceed a sound basic education, and spend more money to do it. Dr. Palaich himself observed that this is so when he noted that New Hampshire used only the lower-spending

half of successful schools, “excluding those that far exceeded the State’s objectives” (R3877).

The court below and the Referees failed to accept this self-evident proposition, and their findings on this issue are fatally tainted as a result. The evidence in the case instead permits only one conclusion: the State defendants’ cost-effectiveness approach, found appropriate by the Regents, the Zarb Commission, and the Governor, is entirely reasonable -- indeed, is an essential element of the costing-out process when the successful schools model is used -- and should not have been rejected.

B. The State Defendants’ Use of the 1.35 Poverty Weight Factor Is Supported by the Record.

The State defendants’ use of the 1.35 poverty weight factor is similarly supported by the Record. Plaintiffs’ own expert indicated as much. Although plaintiffs now suggest otherwise (Pl. Br., p. 27, n20), their expert Dr. Parrish testified unambiguously that the poverty weight factor used in the AIR/MAP study would be, if separately calculated, lower than 1.35:

> Although we have not done calculations that would yield “weightings” comparable to those used in the Standard and Poor’s study, the Regents’ study and Duncombe and Yinger’s analyses, generally speaking, I think that the poverty factor that is implicit in our findings would be at a lower level than the weightings these studies used - and certainly substantially below the 100% poverty weighting used by the regents and the 120% poverty weighting used by Duncombe and Yinger

> - and that if somehow one were to build their weightings into our calculations, the resulting recommendations would be substantially higher than those we in fact reached.

The 1.35 weight factor was in any event clearly within the range of professionally-accepted practice. It is nearly the same value as the 1.40 factor used by the Education Trust, national experts in this field. Standard and Poor's thoroughly examined the research literature and proposed a range of figures used in practice. 1.35 lies within this range, albeit at the low end. Standard and Poor's failure to "recommend" a 1.35 factor is less important than its actual use of the factor in all its calculations, for it would not have used the factor if it believed that its use would lead to inaccurate results. And if it was reasonable for Standard and Poor's to use 1.35, it was unreasonable of the Referees and the court below to reject that figure once the State defendants had accepted it.

C. This Court Should Reverse the Findings of the Supreme Court and the Referees' Recommendations to Correct Their Failure to Accept the State Defendants' Reasonable, Well-Supported Conclusions.

Plaintiffs cannot insulate the conclusions of the court below from this Court's review by resort to the principle that the findings of referees must be confirmed when supported by the record (see Pl. Br., pp. 18-19). There is no fair interpretation

of the evidence that would support a finding that the State defendants' conclusions about the cost-effectiveness filter and 1.35 poverty weight factor are arbitrary or unsupported. The Referees' and lower court's rejection of the State defendants' conclusions reflects their failure to defer to legitimate determinations of the elected branch of government charged with making those determinations in the first instance. This failure taints all of the lower court's conclusions and calculations, and renders them subject to reversal by this Court.

The failure can be seen most clearly in the Referees' treatment of the cost-effectiveness filter. They rejected the use of this filter because they deemed it "both unsupported and arbitrary" (R5848). But it is instead this conclusion itself that was unsupported by the record. When referees' findings are themselves not supported by the evidence, this Court will of course reverse a lower court's determination that relies on them. See, e.g., Sexter v. Kimmelman, Sexter, Warmflash & Leitner, 19 A.D.3d 298, 299 (1st Dep't 2005); The Cadle Co. v. Tri-Angle Assoc., 18 A.D.3d 100, 103-04 (1st Dep't 2005).

A distinct but related flaw taints the Referees' rejection of the 1.35 poverty weight factor. They rejected it not because they found it unreasonable, but because they found the weightings applied by the Regents and (in their view) the AIR/MAP study "of much greater value" (R5850). This quasi-legislative conclusion

was arbitrary and unsupported because it answered the wrong question: not whether the factor the State defendants chose was acceptable, but whether another factor was preferable. If the Referees had applied the proper standard, they would have had to recognize that ample evidence in the Record supports the use of the 1.35 poverty weight factor. Accordingly, this Court should also reverse the Supreme Court's adoption of the finding that the higher 1.5 poverty weight factor is required. See, e.g., Olstein v. Olstein, 309 A.D.2d 697, 698 (1st Dep't 2005) (reversing lower court's adoption of referee's findings where referee applied incorrect standard of proof).

POINT III

THE STATE DID NOT DEFAULT ON ITS OBLIGATION TO ADDRESS THE LIMITED FACILITIES DEFICIENCIES IDENTIFIED IN CFE II

Contrary to plaintiffs' assertion (Pl. Br., p. 3), the State did not "essentially default" on the issue of capital facilities. At the Governor's charge (R962 [Executive Order No. 131]), the Zarb Commission expressly addressed capital needs for New York City and recommended reforms to the State's existing building aid program to meet those needs (R1007-1011). The Governor and Legislature have now enacted may of those reforms, which will dramatically increase the State funding available to New York City. This in turn will enable the City to increase the number

of classrooms and specialized spaces and thereby redress the limited deficiencies identified in CFE II. The State defendants' proposed requirement that the City prepare a Sound Basic Education Plan that outlines its plan to remedy these deficiencies, together with the accountability measures that already exist within the State's building aid program, will ensure that these limited concerns are addressed.

Nothing in CFE II requires the State defendants to abandon their longstanding building aid program in order to fund the City's capital expenditures. While the Court of Appeals provided general "signposts" to guide the State toward compliance, see CFE II, 100 N.Y.2d at 932, none of these signposts directed the State defendants to ascertain the cost of redressing the facilities deficiencies or to provide a sum certain to fund improvements. Without some specific directive on this matter, the State defendants are free to address these concerns through the existing building aid program, as long as that program, which has been modified by recent reforms, can provide adequate funding. The court below therefore should not have displaced the State's existing building aid program and ordered the "specific, dedicated capital fund" of $9.2 billion that plaintiffs sought (Pl. Br., p. 36 and n28, n29).

POINT IV

THE CASES FROM OTHER STATES CITED BY PLAINTIFFS DO NOT SUPPORT THEIR POSITION THAT THE SUPREME COURT PROPERLY ORDERED THE STATE TO PROVIDE INCREASED FUNDING OF NEARLY $30 BILLION

There is of course no precedent in New York's case law for a court-ordered appropriation of funds. Any such order would be contrary to New York decisions discussed in the State defendants' opening brief (Br., pp. 43-44, 49-50).

And courts of other states, even those courts that have held school finance issues justiciable, have similarly recognized the need for restraint in ordering the elected branches of government to implement specific remedies, appropriations or otherwise. The Ohio Supreme Court has repeatedly declined to formulate specific remedies or to issue an order directing specific remedial action. See State ex rel. Ohio v. Lewis, 99 Ohio St. 3d 97, 789 N.E.2d 195 (summarizing the history of the DeRolph litigation), cert. denied sub nom. DeRolph v. Ohio, 540 U.S. 966 (2003). "[R]efus[ing] to encroach upon the clearly legislative function of deciding what the [remedy] will be," State ex rel. Ohio v. Lewis, 99 Ohio St. 3d at 103-04, 789 N.E.2d at 202, that court instead has continued to review the State's efforts to adopt a constitutionally adequate school finance system, and if those remedial efforts have not fully complied, the court has declared that they have not and has provided further guidance to allow the

coordinate branches to reformulate a remedy. In the course of the DeRolph litigation, the Ohio Supreme Court vacated its single attempt to order specific relief, and twice rejected efforts by the lower court to participate in the formulation of the remedy. Id. at 100, 102-04, 789 N.E.2d at 199, 201-03.

The North Carolina Supreme Court has likewise recognized the need for judicial restraint in the remedial phase of a long-standing school adequacy case:

> While we remain the ultimate arbiters of our state's Constitution, and vigorously attend to our duty of protecting the citizenry from abridgments and infringements of its provisions, we simultaneously recognize our limitations in providing specific remedies for violations committed by other government branches in service to a subject matter, such as public school education, that is within their primary domain.

Hoke County Board of Education v. North Carolina, 358 N.C. 605, 645, 599 S.E.2d 365, 395 (2004) (reversing lower court's order directing specific remedial relief).

Plaintiffs nonetheless rely (Pl. Br., pp. 52-55) on cases from foreign jurisdictions, most notably Montoy v. State of Kansas, 112 P.3d 923 (2005) ("Montoy III"), to argue that Supreme Court properly required the State to appropriate nearly $30 billion of additional funding for New York City schools over the next five years. But these cases do not support the notion that a court can make an independent determination that tens of

billions of additional dollars are necessary to fund education (or any other program) and order the State to provide the money.

Montoy certainly does not offer such support, as an examination of that case's history reveals. The Kansas Supreme Court had previously held that the state legislature had failed to make suitable provision for financing the state's public school system. See Montoy v. Kansas, 102 P.3d 1160 (2005) ("Montoy II"). The legislature then enacted remedial legislation, which in Montoy III the Court examined. It determined that the legislature had failed to comply with its prior order.

The key to this determination, however, distinguishes Montoy from the present case. While Montoy II was being litigated, the Kansas legislature commissioned a costing-out study. Then, after Montoy II found that financing was inadequate, the legislature, rather than making use of the study, failed to increase funding in accordance with the study's findings. Because the study was the only evidence the Court in Montoy III had of the amount of additional funding needed, the Court based its remedy on the conclusions of the study. It ordered that one-third of the additional funds recommended by the study, approximately $290 million, be made available in the next school year. This directive, however, was only an interim measure while the

legislature completed a new study of the additional funding necessary to provide a constitutionally adequate education.

Here, by contrast, the State-sponsored study supplied the template for the remedy proposed by the State. Governor Pataki commissioned the Zarb Commission study immediately after CFE II was handed down. That study, based on Standard and Poor's calculations, produced a range of estimates of the additional funding necessary to provide the opportunity for a sound basic education statewide and in New York City. The State defendants' Reform Plan proposed an amount that was within that range and was reasonably calculated to provide New York City students with a constitutionally adequate education. The decision in Montoy III suggests that the Kansas Supreme Court would have accepted such a proposal. But Justice DeGrasse did far more than the Kansas Supreme Court did: he rejected the State's study, made a de novo determination of how much money is required for both operating and capital needs, and ordered the State to ensure payment of those entire sums.

Moreover, New York, unlike the State of Kansas in Montoy, has not responded to its high court's mandates with inaction. It has enacted appropriations consistent with the State-sponsored study and with the five-year phase-in period proposed by the Governor. Despite their disagreement over the actual amount required, the Governor and Legislature have in two years

increased State aid by nearly a third of the resource gap identified by the State defendants' Reform Plan. There is thus no occasion for the courts in this case to provide relief of the kind the Kansas court provided in Montoy.

Nor do the Arkansas and Wyoming cases cited by plaintiffs (Pl. Br., p. 54) provide authority for court-ordered appropriations under the present circumstances. Lake View School Dist. No. 25 v. Huckabee, 91 S.W.3d 472 (Ark. 2002), and Wyoming v. Campbell County School Dist., 32 P.3d 325 (2001), are fully consistent with defendants' position that courts have authority to declare constitutional compliance or noncompliance, and perhaps to take other equitable action to try to induce compliance in the face of defiance or refusal to take reasonable steps toward compliance. But these cases do not justify a de novo judicial determination of the amount necessary to provide New York City's students with the opportunity for a sound basic education or an order to the elected branches of government to appropriate billions of dollars of additional school funding.

CONCLUSION

The order of the court below should be reversed and a declaratory judgment entered that defendants' determination of costs, as adjusted to reflect the up-to-date regional cost index, and other aspects of their plan comply with the State's constitutional mandate.

Dated: Albany, New York
September 15, 2005

Respectfully submitted,

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