

**STATE OF MICHIGAN  
IN THE SUPREME COURT**

COUNCIL OF ORGANIZATIONS AND OTHERS FOR EDUCATION ABOUT PAROCHIAID (CAP); AMERICAN CIVIL LIBERTIES UNION OF MICHIGAN (ACLU); MICHIGAN PARENTS FOR SCHOOLS; 482FORWARD; MICHIGAN ASSOCIATION OF SCHOOL BOARDS; MICHIGAN ASSOCIATION OF SCHOOL ADMINISTRATORS; MICHIGAN ASSOCIATION OF INTERMEDIATE SCHOOL ADMINISTRATORS; MICHIGAN SCHOOL BUSINESS OFFICIALS; MICHIGAN ASSOCIATIONS OF SECONDARY SCHOOL PRINCIPALS; MIDDLE CITIES EDUCATION ASSOCIATION; MICHIGAN ELEMENTARY AND MIDDLE SCHOOL PRINCIPALS ASSOCIATIONS; KALAMAZOO PUBLIC SCHOOLS; and KALAMAZOO PUBLIC SCHOOLS BOARD OF EDUCATION,

Plaintiffs-Appellants,

v.

STATE OF MICHIGAN; RICK SNYDER, Governor, in his official capacity; MICHIGAN DEPARTMENT OF EDUCATION; and SHEILA ALLES, Interim State Superintendent of Public Instruction, in her official capacity,

Defendants-Appellees.

Supreme Court No. 158751

Court of Appeals No. 343801

Court of Claims No. 17-000068-MB

**BRIEF FOR *AMICUS CURIAE* PUBLIC FUNDS PUBLIC SCHOOLS**

PAUL, WEISS, RIFKIND,  
WHARTON & GARRISON LLP  
Eric Alan Stone (2943546)\*  
Sara E. Hershman (5453840)\*  
Melina M. Meneguín Layerenza  
(5559240)\*  
Juan J. Gascon (5646179)\*  
1285 Avenue of the Americas  
New York, NY 10019  
(212) 373-3000

*\*Pro hac vice*

EDUCATION LAW CENTER  
Jessica Levin (5482914)  
Wendy Lecker (2283125)  
60 Park Place, Suite 300  
Newark, NJ 07102  
(973) 624-1815

*Attorneys for Amicus Curiae*

SALVATORE PRESCOTT &  
PORTER, PLLC  
Jennifer B. Salvatore  
(P66640)  
105 E. Main Street  
Northville, MI 48167  
(248) 679-8711

**TABLE OF CONTENTS**

|  | <b><u>Page</u></b> |
|--|--------------------|
| TABLE OF AUTHORITIES .....   | iii                |
| INTEREST OF <i>AMICUS CURIAE</i> .....   | 1                  |
| SUMMARY OF ARGUMENT .....  | 2                  |
| ARGUMENT.....  | 4                  |
| I. THE PLAIN TEXT OF THE NO-AID CLAUSE OF THE EDUCATION ARTICLE EXPRESSES THE MICHIGAN ELECTORATE’S INTENT TO MAINTAIN AND SUPPORT THE STATE’S PUBLIC EDUCATION SYSTEM BY BANNING FUNDING OF PRIVATE SCHOOLS ..... | 4                  |
| II. MICHIGAN VOTERS APPROVED THE NO-AID AMENDMENT TO THE EDUCATION ARTICLE TO PROTECT THE STATE’S PUBLIC SCHOOL SYSTEM.....  | 8                  |
| III. THE CHRONIC UNDERFUNDING OF MICHIGAN PUBLIC SCHOOLS THAT LED VOTERS TO ADD THE NO-AID CLAUSE TO THE EDUCATION ARTICLE HAS BECOME EVEN MORE SEVERE .....   | 10                 |
| A. Chronic Underfunding Directly Harms Michigan Students.....  | 10                 |
| 1. Most Michigan Public School Students Perform Below State Proficiency Benchmarks .....   | 13                 |
| 2. Public School Underfunding Limits Educational Opportunity and Harms Student Outcomes .....  | 14                 |
| 3. High-Need Students Require Higher Levels of Funding.....  | 17                 |
| 4. Michigan Fails to Equitably Allocate Funding Among Districts.....   | 19                 |
| B. Section 152b Would Exacerbate the Chronic Underfunding of Public Schools .....  | 19                 |
| CONCLUSION.....  | 23                 |

**TABLE OF AUTHORITIES**

|   | <b>Page(s)</b> |
|---|----------------|
| <b>CASES</b>  |                |
| <i>Abbott v Burke</i> ,<br>136 NJ 444; 643 A2d 575 (1994).....  | 21             |
| <i>Abbott v Burke</i> ,<br>196 NJ 544; 960 A2d 360 (2008).....  | 21             |
| <i>Bond v Pub Sch of Ann Arbor Sch Dist</i> , 383 Mich 693 (1970).....  | 4              |
| <i>Brigham v Vermont</i> ,<br>166 Vt. 246; 692 A2d 384 (1997).....  | 21             |
| <i>Campaign for Fiscal Equity v New York</i> ,<br>100 NY2d 893; 801 NE2d 326 (2003).....  | 21             |
| <i>City of Lansing v Hilliard</i> ,<br>308 Mich 560 (1944) (per curiam).....  | 7              |
| <i>DR v Mich Dep't of Ed</i> ,<br>No 16-CV-13694-AJT-APP, 2016 WL 6080952 (ED Mich October 18, 2016).....   | 12             |
| <i>Durant v Michigan</i> ,<br>456 Mich 175; 566 NW2d 272 (1997).....  | 21             |
| <i>Edgewood Indep Sch Dist v Kirby</i> ,<br>777 SW2d 391 (Tex. 1989).....   | 21             |
| <i>Employment Div v Smith</i> ,<br>494 US 872 (1990).....   | 6              |
| <i>Gannon v Kansas</i> ,<br>305 Kan 850 (2017).....   | 21             |
| <i>Gary B v Snyder</i> ,<br>No 16-CV-13292 (ED Mich September 13, 2016).....  | 12             |
| <i>Lapeer County Clerk v Lapeer Circuit Court</i> ,<br>469 Mich 146; 665 NW2d 452 (2003).....   | 7              |
| <i>In re Legislature's Request for an Opinion on the Constitutionality of Chapter 2<br/>of Amendatory Act No 100 of Pub Acts of 1970</i> ,<br>384 Mich 82; 180 NW2d 265 (1970)..... | 8              |
| <i>Rose v Council for Better Ed, Inc</i> ,<br>790 SW2d 186 (Ky 1989).....   | 21             |

*Traverse City Sch Dist v Attorney General*,  
384 Mich 390; 185 NW2d 9 (1971)..... 4, 5, 6, 8

*Trinity Lutheran Church of Columbia, Inc v Comer*,  
137 S Ct 2012 (2017) .....6

**STATUTES**

1948 CL 352.20 .....8

1965 PA 343 .....8

1970 PA 100 .....8

2016 PA 249, § 152b..... passim

MCL 29.5p.....2

MCL 380.1531.....2

MCL 380.1561(3)(a).....2

MCL 388.1611 .....2

MCL 388.1752b(1) .....2

MCL 388.1752b(9) ..... 6, 20

**OTHER AUTHORITIES**

Allen et al., *An Interaction-Based Approach to Enhancing Secondary School Instruction and Student Achievement*, 333 Sci 1034 (2011)..... 18

APA, *Michigan Education Finance Study* (2016)..... passim

APA & POA, *Costing out the Resources Needed to Meet Michigan’s Standards and Requirements* (2018)..... passim

Arsen, Delpier & Nagel, *Michigan School Finance at the Crossroads: A Quarter Century of State Control* (2019) ..... 11, 15, 16

Arsen & Geary, *Michigan Schools Face Nation’s Worst Decline in State Education Funding* (January 23, 2019) ..... 11

Baker, Farrie & Sciarra, *Is School Funding Fair? A National Report Card* (Newark: Education Law Center, 2018).....20

Binelli, *Michigan Gambled on Charter Schools. Its Children Lost*, New York Times (September 5, 2017)..... 11

Citizens Research Council of Mich, *Detroit School District Finances, Council Comments No 829* (March 19, 1970) .....9

Citizens Research Council of Mich, *State Ballot Issue “C,” Council Comments No 833* (October 14, 1970).....9

Cordray, *School Reform Panel Hears Parochiaid, Financing Pleas*, Ann Arbor News (July 17, 1969).....8, 9

*Delays in State Aid Bring Out Blind Spots*, Ann Arbor News (May 23, 1970) ..... 10

Dykes, *The Search for Community: Michigan Society and Education, 1945–1980s*, in Hathaway, ed, *Michigan Visions of Our Past* (East Lansing, Mich: Mich St Univ P, 1989) .....9

Education Trust–Midwest, *Michigan’s Talent Crisis: The Economic Case for Rebuilding Michigan’s Broken Public Education System*..... 16

Farrie, Kim, & Sciarra, *Making the Grade 2019: How Fair Is School Funding in Your State?* (Newark: Education Law Center, 2019) ..... 16, 19

Jackson, Johnson & Persico, *The Effect of School Finance Reforms on the Distribution of Spending, Academic Achievement, and Adult Outcomes*, Nat’l Bureau of Economic Research Working Paper No 20118 (2014)..... 15

Green, “*Blaming Blaine*”: *Understanding the Blaine Amendment and the “No-Funding” Principle*, 2 First Amend L Rev 107 (2004).....7

Lapan, Whitcomb & Aleman, *Connecticut Professional School Counselors: College and Career Counseling Services and Smaller Ratios Benefit Students*, 16 Prof Sch Counseling 117 (2012) ..... 18

Michigan Constitution Article 1, § 4 .....7

Michigan Constitution Article 8, § 2 ..... passim

Michigan Department of Education, *Guide to State Assessments*. ..... 13

Michigan Department of Education, *Section 152b Reimbursement Form*..... 2, 20

*Proposal C Goes Too Far? Ianni Says No*, Ann Arbor News (October 17, 1970) ..... 9, 10

Rowe, *Study: Michigan School Funding Is Inadequate and Inequitable* ..... 11

Smith & Sherrod, *School Nurses and Student Absenteeism: The Role of School Nurse Staffing Levels in NC’s Efforts to Turn Around Low-Performing Schools* (Raleigh: Public School of North Carolina, 2013)..... 18

Sparks, *Parents Outraged After Picture of Crowded School Bus Surfaces Online*,  
 WWMT-TV (October 10, 2014)..... 11

Special Education Funding Subcommittee,  
*Special Education Funding Subcommittee Report* (2017) ..... 18

State of Michigan, Terri Lynn Land, Secretary of State, *Initiatives and  
 Referendums Under the Constitution of the State of Michigan of 1963*..... 10

United States Department of Education, *2018 Determination Letters on State  
 Implmentation of IDEA* (2018) ..... 17, 18

**INTEREST OF AMICUS CURIAE**

Public Funds Public Schools (“PFPS”) is a national campaign to ensure that public funds for education are exclusively used to maintain and support public schools. PFPS opposes all forms of private school vouchers, including Education Savings Accounts and tax credit scholarships, as well as direct aid to private schools and other diversions of public funds that harm public education.

PFPS uses a range of strategies to protect and promote public education. This includes engaging in litigation challenging school vouchers and other diversions of public funds to private schools, as well as supporting the efforts of others in doing so. PFPS also tracks state and federal legislation establishing or expanding voucher and aid diversion programs; provides up-to-date research on the status and effects of school vouchers on public education; and joins with local, state, and national partners to advocate for using public funds exclusively for public schools.

PFPS is a collaboration of the Southern Poverty Law Center (“SPLC”), Education Law Center (“ELC”), and Munger, Tolles & Olson LLP (“MTO”). SPLC, a nonprofit civil rights organization founded in 1971, is dedicated to fighting hate and bigotry and to seeking justice for the most vulnerable members of society. ELC, a nonprofit organization founded in 1973, serves as a leading voice for public school children and one of the most effective advocates for equal educational opportunity and education justice in the United States. MTO is a national law firm that is committed to pro bono work and led the legal team that successfully challenged a broad voucher program in Nevada. Based on this extensive expertise and experience, SPLC, ELC, and MTO have participated as *amici curiae* or as counsel in cases promoting public education rights—including cases to prevent the diversion of public funds from public schools—in states across the nation. PFPS filed an amicus brief at the petition stage in this action, and was invited to file an *amicus* brief on the merits by Order of this Court dated June 24, 2019.

## SUMMARY OF ARGUMENT

As amended in 2017, Section 152b of 2016 PA 249 (“Section 152b”) diverts \$2.5 million annually from Michigan’s public-schools budgets for 2016–2017 and 2017–2018 “to reimburse actual costs incurred by nonpublic schools in complying with a health, safety, or welfare requirement mandated by a law or administrative rule of this state.” MCL 388.1752b(1) (diverting money “[f]rom the general fund money appropriated under section 11” for public education pursuant to the “State School Aid Act of 1979” (see MCL 388.1611)). In so doing, Section 152b unconstitutionally allocates taxpayer funds from Michigan’s inadequate public education budget to *nonpublic* schools so that such schools may cover a wide range of expenses related to their operations and the education of their students. Those expenses expand well beyond health-safety-and-welfare concerns to address the content of the curricula taught in nonpublic schools and the licensure of teachers.<sup>1</sup> PFPS respectfully submits this brief in support of Plaintiffs-Appellants to provide the Court with the relevant history of Michigan voters’ decision to prohibit the public funding of private schools and a critical analysis of the funding crisis facing Michigan’s public education system.

In reversing the Court of Claims, the Court of Appeals held that Section 152b is valid under the “no-aid” clause in Article 8, § 2 (“Section 2”) of the Michigan Constitution.

---

<sup>1</sup> There are thirty-eight categories of reimbursable expenditures listed on the Michigan Department of Education’s relevant form, many of which also apply to public schools and to other Michigan workplaces and institutions. See Michigan Department of Education, Section 152b Reimbursement Form, <[https://www.michigan.gov/documents/mde/2018.Section.152b.Reimbursement.Form\\_610867\\_7.xlsx](https://www.michigan.gov/documents/mde/2018.Section.152b.Reimbursement.Form_610867_7.xlsx)> (accessed December 26, 2019). The reimbursable expenses range from disclosure of information about hazardous chemicals, to securing licenses for teachers, to the content of the curriculum taught at nonpublic schools. See, e.g., MCL 29.5p (employee’s right to know about hazardous chemicals); MCL 380.1531 (issuing licenses and certificates for teachers); MCL 380.1561(3)(a) (curriculum requirements).

*Council of Orgs & Others for Ed About Parochiaid v Michigan*, 326 Mich App 124 (2018) (*CAP II*). That holding violates the plain language of the Michigan Constitution. Section 2, a provision of Article 8—Michigan’s Education Article—expressly states that “[n]o public monies or property shall be appropriated or paid . . . directly or indirectly to aid or maintain” any private school. Section 152b would do just that, by diverting public funds to aid and maintain nonpublic schools in direct contravention of Section 2. See *CAP II*, 326 Mich App at 160 (GLEICHER, J., dissenting in part); *Council of Orgs & Others for Ed About Parochiaid v Michigan*, opinion of the Court of Claims, entered April 26, 2018 (Docket No. 17-000068-MZ) (*CAP I*). This diversion of public funds to private schools is precisely what the no-aid clause prohibits, and it imperils the State’s ability to meet its concomitant obligation under Section 2 “to maintain and support a system of free public elementary and secondary schools.”

*Amicus* urges the Court to reverse the ruling below. *First*, Section 152b authorizes payments to “aid or maintain” nonpublic schools and therefore, is unconstitutional under Section 2. That provision enshrines in the Michigan Constitution the People’s fundamental interest in using their limited taxpayer dollars to maintain and support the State’s underfunded public education system, rather than diverting money away from it. The 1970 amendment of Article 8 was driven by this underlying goal—to maintain and support the public education system—and not by animus towards sectarian schools.

*Second*, Section 2 reflects the will of Michigan voters to protect public school funding, and the circumstances of the enactment show why. At the time the no-aid clause was added to the Education Article in 1970, Michigan’s fiscal deficit had led to the chronic underfunding of public education and growing disparities in education outcomes among students. The no-aid clause was an unequivocal statement by the Michigan electorate that it wanted to

constitutionally protect the funding of Michigan public schools and improve those schools by preventing the diversion of taxpayer funds, either directly or indirectly, to *any* nonpublic schools.

*Third*, the very condition that led Michigan voters to approve the no-aid clause in 1970—the chronic underfunding of public schools—persists to this day. Michigan’s public schools lack adequate funding and essential resources and hence have struggled to address widening disparities in educational opportunities and outcomes across the State, especially for vulnerable, high-need students. If allowed to stand, Section 152b will further exacerbate these educational disparities by siphoning public funds from the already underfunded public schools.

For these reasons, as mandated by the no-aid clause in Michigan’s Constitution, funds appropriated to Michigan’s public schools cannot be used to support nonpublic schools. Accordingly, this Court should reverse the decision below.

### ARGUMENT

#### **I. THE PLAIN TEXT OF THE NO-AID CLAUSE OF THE EDUCATION ARTICLE EXPRESSES THE MICHIGAN ELECTORATE’S INTENT TO MAINTAIN AND SUPPORT THE STATE’S PUBLIC EDUCATION SYSTEM BY BANNING FUNDING OF PRIVATE SCHOOLS**

This Court’s analysis of the no-aid clause of Section 2 begins by “giv[ing] effect to the plain meaning of such words as understood by the people who adopted it.” *Bond v Pub Sch of Ann Arbor Sch Dist*, 383 Mich 693, 699 (1970). In 1970, the People of Michigan chose unambiguous language to enshrine five prohibitions in their constitution, including an express bar on the appropriation or payment of “public monies,” whether paid “directly or indirectly,” to aid “any private, denominational, or other nonpublic” school. Const 1963, art 8, § 2; *Traverse City Sch Dist v Attorney General*, 384 Mich 390, 411; 185 NW2d 9 (1971) (listing the five prohibitions).

Prior to 1970, as it does today, Section 2 obligated the Legislature to “maintain” and “support” a system of free public education. Const 1963, art 8, § 2. In 1970, the People borrowed those familiar terms, using them to bar the maintenance or aid of “any private, denominational or other nonpublic” school and to specify three prohibited types of “support” for nonpublic schools and their employees. Const 1963, art 8, § 2; *Traverse City*, 384 Mich at 411. In so doing, the People deliberately differentiated public schools—which must be affirmatively “maintain[ed] and support[ed]” by the State—from nonpublic schools, which the State may not “aid,” “maintain,” or “support” using public monies. Const 1963, art 8, § 2.

The People of Michigan intended, with this amendment, to keep *all* public education funds *solely* in public schools. Section 152b attempts to circumvent the clear ban on support of nonpublic schools by redirecting public funds into the hands of private actors who run such schools, allowing them to spend public dollars as they see fit after being made whole for their basic statutory and regulatory compliance costs. The People expressly provided in Section 2 that the State may *not* circumvent the no-aid provision by doing indirectly that which it may not do directly. As Justice Gleicher noted in her partial dissent from the Court of Appeals’ decision in this case, the “easily parsed” meaning of Section 2 is that, just as the State could not spend public funds to directly run a nonpublic school, it could not use those funds to subsidize the costs of compliance with statutory and regulatory requirements necessary for a nonpublic school to “stay in business.” *CAP II*, 326 Mich App at 160 (GLEICHER, J., dissenting in part). Likewise, the Constitution brooks no distinction between using public funds “to pay a portion of the salaries of private lay teachers of secular nonpublic school courses in the nonpublic school”—which Section 2 forbids, as this Court held in *Traverse City*—and Section 152b’s allowance for reimbursements that “are expressly linked to wages owed to nonpublic school

employees.”<sup>2</sup> Compare *Traverse City*, 384 Mich at 413, with *Council of Organizations & Others for Educ About Parochial v State*, unpublished opinion of the Court of Claims, entered January 1, 2018 (Docket No. 17-000068-MZ) (*CAP I*), p 10.

Michigan’s focus on distinguishing public and non-public schools is no accident. The People of Michigan’s unflinching commitment to public education is not related to any preference towards nonsectarian or non-Catholic schools.<sup>3</sup> Further, the People’s deliberate choice to place the no-aid clause within the Education Article, immediately following the express constitutional command to “support and maintain” public schools, shows that they considered the obligation and the ban as inextricable from each other. And for good reason. As discussed

---

<sup>2</sup> Under Section 152b, nonpublic schools would be entitled to reimbursement of the “hourly wage for the employee or employees performing a task” associated with each of the mandated requirements. See MCL 388.1752b(9).

<sup>3</sup> Despite Justice Markman’s concerns, the neutrality of Michigan’s no-aid provision also forecloses an attack under the Free Exercise Clause of the First Amendment. As the United States Supreme Court held in *Employment Div v Smith*, 494 US 872 (1990), the First Amendment generally does not “relieve an individual of the obligation to comply with a valid and neutral law of general applicability” such as this one. *Id.* at 879. The United States Supreme Court decision in *Trinity Lutheran Church of Columbia, Inc v Comer*, 137 S Ct 2012 (2017), is not to the contrary. In that case, the Court held that a policy that “expressly discriminates against otherwise eligible recipients by disqualifying them from a public benefit solely because of their religious character . . . imposes a penalty on the free exercise of religion that triggers the most exacting scrutiny.” *Id.* at 2021. By contrast, Section 152b would not appropriate public funds to institutions that are “otherwise eligible” but for their religious status. Under the terms of Section 2, any nonpublic school is ineligible for public funding, regardless of religious affiliation. No institution that would benefit from Section 152b “is put to the choice between being a church [or religiously affiliated school] and receiving a public benefit,” because abandoning its religious status, if any, would not alter the funding-ineligible, nonpublic nature of the institution. *Trinity Lutheran*, 137 S Ct at 2024.

below in Part II, Section 2 was amended at a time of heightened concern over scarce public education resources.<sup>4</sup>

Put simply, the People did not adopt the no-aid amendment to Section 2 in a vacuum, and in giving effect to their original intent, neither should the Court construe the provision in isolation. See *Lapeer County Clerk v Lapeer Circuit Court*, 469 Mich 146, 156; 665 NW2d 452 (2003) (“[E]very provision [of the Michigan Constitution] must be interpreted in the light of the document as a whole.”); *City of Lansing v Hilliard*, 308 Mich 560, 564–65 (1944) (per curiam) (different provisions within the same article of the Michigan Constitution “must be construed in harmony” with each other). This Court should consider the Education Article as a whole and honor its manifest commitment to securing public funds for public education by banning their allocation to nonpublic schools.

---

<sup>4</sup> Furthermore, Amici Immaculate Heart of Mary and First Liberty Institute are wrong about the history of Section 2. Since 1835, Michigan’s Constitution has contained, in some form or another, a *separate* provision barring the allocation of public funds to sectarian schools. The current provision, not at issue here, decrees that “[n]o money shall be appropriated or drawn from treasury for the benefit of any religious sect or society, theological or religious seminary.” Const 1963, art 1, § 4. Section 4 long predates the proposal of the federal Blaine Amendment in 1875, and was instead enacted at a time when there were few Catholic parochial schools in Michigan and no reports of purported concern about Catholic activities in the state. See, e.g., Green, “*Blaming Blaine*”: *Understanding the Blaine Amendment and the “No-Funding” Principle*, 2 First Amend L Rev 107, 126–27 (2004). Amici offer no evidence of anti-Catholic sentiment contemporaneous with the 1835 adoption of that provision; instead, they rely on the conclusory assertion that an organization established more than fifty years later had a “strong membership in Michigan.” Amicus Br at 8. For reasons explained below in Part II, Amici do not establish that any anti-Catholic sentiment drove the proposal to amend the entirely separate, education-focused Section 2 more than a century later.

## II. MICHIGAN VOTERS APPROVED THE NO-AID AMENDMENT TO THE EDUCATION ARTICLE TO PROTECT THE STATE'S PUBLIC SCHOOL SYSTEM

The meaning of the no-aid clause in Section 2 of the Education Article is further clarified by “the circumstances surrounding the adoption of [that] constitutional provision and the purpose sought to be accomplished” through the enactment. See *Traverse City*, 384 Mich at 405. Yet, the Court of Appeals ignored the central aim of the voters who approved the no-aid clause in 1970—to protect and safeguard funding for public education, consistent with the State’s affirmative duty under Section 2, by prohibiting the direct or indirect diversion of public funding to nonpublic schools. This conspicuous error warrants reversal of the decision below.

In the decades preceding the 1970 amendment of Section 2, the Michigan Legislature *did* authorize various forms of indirect aid to nonpublic schools. See, e.g., 1948 CL 352.20 (permitting transportation for nonpublic school students); 1965 PA 343 (requiring that auxiliary services, such as health services and examinations, be provided on an equal basis to students of public and nonpublic schools). In the 1970 session, the Legislature enacted a provision in the State School Aid Bill that allowed broad funding of nonpublic schools. 1970 PA 100. The provision was declared constitutional in an advisory opinion issued by this Court. *In re Legislature’s Request for an Opinion on the Constitutionality of Chapter 2 of Amendatory Act No 100 of Pub Acts of 1970*, 384 Mich 82 (1970). Public funds then began to be disbursed by the State to nonpublic schools. See *Traverse City*, 384 Mich at 406 n 2.

In response, citizens who favored retaining public funds for public schools circulated a “no-aid to private schools” petition. *Id.* That proposal, which amended Section 2, was decisively approved by the Michigan electorate. A central issue in the debate surrounding the vote was the urgent need to ensure sufficient public school funding. See, e.g., Cordray, *School Reform Panel Hears Parochial Aid, Financing Pleas*, Ann Arbor News (July 17, 1969)

<<http://oldnews.aadl.org/node/78060>> (accessed December 26, 2019) (“[T]he overriding issue—at least the one most important to the taxpayer—will be the one of financing educational reform.”). At the time, many school district budgets were facing stress from growing deficits, increases in student needs, and fulfillment of teacher contracts. See, e.g., Citizens Research Council of Mich, *Detroit School District Finances, Council Comments No 829* (March 19, 1970).

The Citizens Research Council of Michigan—the state’s oldest public-policy research organization—chronicled the debate, noting that the “impetus” for the proposal was the Legislature’s attempt to finance non-public schools using the public school aid act. See Citizens Research Council of Mich, *State Ballot Issue “C,” Council Comments No 833* (October 14, 1970). The no-aid proposal would “prohibit direct payment of public funds (specifically \$22 million appropriated by the State in fiscal year 1971) as financial aid to non-public schools.” *Id.* An overreliance on local property taxes to fund public education underscored the importance of State funding. See Dykes, *The Search for Community: Michigan Society and Education, 1945–1980s*, in Hathaway, ed, *Michigan Visions of Our Past* (East Lansing, Mich: Mich St Univ P, 1989), pp. 300–301 (discussing the Legislature’s reluctance to increase funding to meet education needs statewide and the resulting rise in dropout rates). The no-aid proposal was “aimed specifically at prohibiting the use of public funds in non-public elementary and secondary schools.” See Citizens Research Council of Mich, *State Ballot Issue “C,” Council Comments No 833* (October 14, 1970).

Proponents of the no-aid clause were concerned that the use of public funds for nonpublic schools would divert and deplete already scarce state funding for public schools. As noted in the *Ann Arbor News*, “[t]he basic issue is that of direct aid to non-public schools. It is the fact that one-half the cost of teachers’ salaries which non-public schools receive in 1970–71 . . . will provide more state aid for non-public schools than for many public schools.” *Proposal C*

*Goes Too Far? Ianni Says No*, Ann Arbor News (October 17, 1970) <<http://oldnews.aadl.org/node/76419>> (accessed December 26, 2019). These concerns were exacerbated by the Legislature’s delay in distributing the annual appropriations for public schools in 1970. See *Delays in State Aid Bring Out Blind Spots*, Ann Arbor News (May 23, 1970) <<http://oldnews.aadl.org/node/78090>> (accessed December 26, 2019). At the same time that public schools were awaiting their state aid appropriations, the Legislature was proposing to allocate millions to private schools.

The People’s intent to ensure sufficient funding for public schools by categorically preventing the diversion of taxpayer dollars to nonpublic schools was reconfirmed in 2000, when more than 69% of voters overwhelmingly rejected an initiatory petition that would have amended the Constitution to allow for indirect support of nonpublic schools. State of Michigan, Terri Lynn Land, Secretary of State, *Initiatives and Referendums Under the Constitution of the State of Michigan of 1963*, <[https://www.michigan.gov/documents/sos/Const\\_Amend\\_189834\\_7.pdf](https://www.michigan.gov/documents/sos/Const_Amend_189834_7.pdf)> (accessed December 26, 2019). As amended, Section 2 vindicates the clear and continuing will of the Michigan electorate that state funds be used to support public education.

### **III. THE CHRONIC UNDERFUNDING OF MICHIGAN PUBLIC SCHOOLS THAT LED VOTERS TO ADD THE NO-AID CLAUSE TO THE EDUCATION ARTICLE HAS BECOME EVEN MORE SEVERE**

#### **A. Chronic Underfunding Directly Harms Michigan Students**

Public school underfunding was the pivotal concern for voters when they approved adding the no-aid clause to the Education Article in 1970, and it is a more severe problem today. Thus, the very same conditions that led voters to prohibit nonpublic school funding exist with even greater urgency now, and call into question the State’s ability to fulfill its affirmative obligation—also enshrined in Section 2—to “maintain and support” a system of free public education.

Numerous studies and reports have shown that Michigan’s funding of public schools remains “woefully insufficient and grievously inequitable.” Rowe, *Study: Michigan School Funding Is Inadequate and Inequitable*, <<http://aftmichigan.org/study-michigan-school-funding-is-inadequate-and-inequitable/>> (accessed December 26, 2019); see also Arsen & Geary, *Michigan Schools Face Nation’s Worst Decline in State Education Funding* (January 23, 2019) <<https://msutoday.msu.edu/news/2019/michigan-schools-face-nations-worst-decline-in-state-education-funding/>> (accessed December 26, 2019). State funding shortfalls have the greatest impact on cities and districts serving large numbers of “high-need” students, i.e., those with increased needs due to household and neighborhood poverty, status as English Language Learners, and/or disabilities. See *id.* Although its schools were once among the nation’s best-funded, Michigan’s financing of public education has fallen to 38th—a plummet “nothing short of shameful.” *Id.* Between 1995 and 2015, Michigan’s education revenue growth ranked *last* in the country. Arsen, Delpier & Nagel, *Michigan School Finance at the Crossroads: A Quarter Century of State Control* (2019), pp 30–31, <<http://education.msu.edu/ed-policy-phd/pdf/Michigan-School-Finance-at-the-Crossroads-A-Quarter-Center-of-State-Control.pdf>> (accessed December 26, 2019). Michigan’s per-pupil spending ranks near the bottom for the Midwest. See Binelli, *Michigan Gambled on Charter Schools. Its Children Lost*, *New York Times* (September 5, 2017) <<https://nyti.ms/2x7whOQ>> (accessed December 26, 2019).

Persistent school funding shortfalls directly impact students. See, e.g., *id.* (lack of funds led Highland Park school authorities to place buckets on the floor and garbage bags over blackboards instead of repairing a leaking roof); Sparks, *Parents Outraged After Picture of Crowded School Bus Surfaces Online*, *WWMT-TV* (October 10, 2014) (budget constraints led several schools to use a single bus each, forcing students to sit in aisles and atop one another). One

recent lawsuit alleges egregious conditions in Detroit, including a month-long period during which an eighth-grade student was put in charge of teaching seventh- and eighth-grade math classes when a teacher quit mid-year. See Compl *Gary B v Snyder*, No 16-CV-13292 (ED Mich September 13, 2016). Another lawsuit documents severe deficiencies in services for students with disabilities in Flint. See Compl *DR v Mich Dep't of Ed*, No 16-CV-13694-AJT-APP, 2016 WL 6080952 ¶¶ 76–88 (ED Mich October 18, 2016) (explaining that the Flint school district's budget is inadequate to provide special education services for students with disabilities).

The State's own studies confirm the severity of public school underfunding, as well as its negative impact on student outcomes. A school finance consultant retained by the State, Augenblick, Palaich and Associates ("APA"), found significant deficiencies in Michigan's school finance system, resulting in the need for additional resources to meet the State's *own* student proficiency benchmarks. See APA, *Michigan Education Finance Study* (2016) (the "2016 Finance Study"), pp xi–xiv, <[https://www.michigan.gov/documents/budget/Michigan\\_Education\\_Finance\\_Study\\_527806\\_7.pdf](https://www.michigan.gov/documents/budget/Michigan_Education_Finance_Study_527806_7.pdf)>.

Subsequently, the School Finance Research Collaborative—a group of Michigan education experts and business executives—hired APA and another consultant, Picus, Odden, and Associates ("POA"), to conduct a more comprehensive study of public-school funding in the state. See APA & POA, *Costing out the Resources Needed to Meet Michigan's Standards and Requirements* (2018) (the "2018 Resources Report"), pp 1–3, <<https://www.fundmischools.org/wp-content/uploads/2018/01/School-Finance-Research-Collaborative-Report.pdf>>. The 2018 Resources Report found that Michigan's public education funding was substantially inadequate, particularly for high-need students. *Id.* at 60–62, 171–172.

## 1. Most Michigan Public School Students Perform Below State Proficiency Benchmarks

The State-commissioned 2016 Finance Study demonstrates that most Michigan public school students perform below state-set proficiency levels in most subjects. In that study, APA collected performance data by grade level for each state standardized test and for each school district in Michigan. *2016 Finance Study*, p 4. It used this data to identify districts in which the percentage of students scoring at or above the proficient level for all subjects was above the state average (the “successful” districts). *Id.* at 7.<sup>5</sup>

The 2016 Finance Study revealed that, in most districts, a majority of students are performing below the level considered “proficient” according to Michigan’s “merit standard.”<sup>6</sup> See *id.* at 9. It noted that “[a]verage proficient and above levels were relatively low for most test areas, with all subjects but Reading below 50%.” *Id.* Despite this low bar, only 186 districts, or 34.4%, consistently performed above the statewide average in each of the five subject areas measured and were therefore categorized as “successful” districts. *Id.* Because success for purposes of the 2016 Finance Study is defined in terms of relative performance against the statewide average rather than an objective metric of achievement under Michigan’s “merit standard,” these so-called “successful” districts typically had a majority of their students performing at non-proficient levels in up to four of the five core subjects. See *id.* at 10 (showing

---

<sup>5</sup> In “successful” districts the percentage of students scoring at or above the proficient level exceeded 36% for math, 65% for reading, 20% for science, 29% for social studies, and 47% for writing. *Id.* at 7–8.

<sup>6</sup> Student performance under Michigan’s “merit standard” is assessed annually through the standardized Michigan Merit Examination, which measures student proficiency in five core areas: reading, writing, math, science, and social studies. See Michigan Department of Education, *Guide to State Assessments*, <[http://www.michigan.gov/documents/mde/Spring\\_2017\\_Guide\\_to\\_State\\_Assessments\\_jl\\_536062\\_7.pdf](http://www.michigan.gov/documents/mde/Spring_2017_Guide_to_State_Assessments_jl_536062_7.pdf)> (accessed December 26, 2019).

that only 34 districts had more than 50% of their students scoring at proficient levels in math, writing, and reading, while still exceeding 20% proficiency in science and 29% proficiency in social studies). And even the 34 “high-performing” districts—the highest category—still had a majority of their students performing at non-proficient levels in science and social studies.<sup>7</sup> *Id.* at 9–10.

## **2. Public School Underfunding Limits Educational Opportunity and Harms Student Outcomes**

The 2016 Finance Study and other reports demonstrate that Michigan public schools are underfunded and that the levels of expenditures in those schools correlate with performance outcomes. After categorizing school districts based on their students’ performance, the 2016 Finance Study analyzed district revenues and expenditures. *Id.* at 15–29. These data revealed significant discrepancies in per-student spending across the State and showed that increased funding had a positive impact on educational outcomes. The 2016 Finance Study also analyzed the level of funding needed to afford all Michigan students a meaningful opportunity to achieve the proficiency levels of students in “high-performing” districts.

The 2016 Finance Study found that “successful” districts, on average, spent more on a per-student basis than those that were not “successful”—not only on core instruction but also on support services such as nurses and counselors. *Id.* at 22. The spending gap was even larger when comparing “high-performing” and “non-high-performing” districts. *Id.* at 23. Notably, the

---

<sup>7</sup> As noted above, “successful” districts are districts that performed above the statewide average in each of the five subject areas measured, whereas “high-performing” districts are districts that performed at least one standard deviation above the statewide average in each of the five subject areas measured. To be considered a “high-performing” district, at a minimum, 51% of the students must be proficient in math, 80% in reading, 31% in science, 43% in social studies, and 63% in writing. *2016 Finance Study*, p 10. In contrast, to be considered a “successful” district, only 36% of the students must be proficient in math, 65% in reading, 20% in science, 29% in social studies, and 47% in writing. *Id.* at 7–8.

34 “high-performing” districts spent, on average, \$1,589 more per student each year than even the 186 “successful” districts,<sup>8</sup> corresponding to a 17.4% increase over the latter’s average spending of \$9,158 per student. See *id.* at 26.

Similarly, the 2018 Resources Report confirms that the average amount spent per student is woefully inadequate.<sup>9</sup> One of the studies in the report found that school districts would need a base spending level of \$9,590 per pupil to provide students an adequate education, see *2018 Resources Report*, pp 60–62, which would require an increase of \$3.63 billion in education funding, *Michigan School Finance at the Crossroads*, pp 74–76. The 2018 Resources Report’s second study, based on evidence gathered from schools and districts across the nation, recommends a base spending level of \$10,136 per student, before accounting for additional funds required for high-need students and for transportation and food costs.<sup>10</sup> See *2018 Resources Report*, pp 171–172.

These spending patterns reflect stark disparities in the level and allocation of state and local funding to school districts across the State. Differences in local revenue alone—

---

<sup>8</sup> The difference persisted, albeit less starkly, even when APA excluded the 13 districts in Michigan that spend substantially above the state average (\$21,030 or more per student annually). *Id.* at 6. When those 13 districts are excluded, the remaining high-performing districts still outspend “successful” districts by \$817 per student per year. *Id.* at 26.

<sup>9</sup> Differences in the data and the regression model used to calculate per-pupil spending likely explain the numerical differences between the level of funding reported in the 2016 Finance Study and other reports, including the 2018 Resources Report and studies published by the Education Law Center.

<sup>10</sup> These two studies join the wealth of existing literature that shows increased funding is needed in underperforming public schools. See, e.g., Jackson, Johnson & Persico, *The Effect of School Finance Reforms on the Distribution of Spending, Academic Achievement, and Adult Outcomes*, Nat’l Bureau of Economic Research Working Paper No 20118 (2014) (analyzing data on per-pupil spending from 1967–2010 and finding that there is a significant causal relationship between school funding and improvements in long-term educational outcomes).

primarily property taxes—provide the 34 “high-performing” districts an extra \$1,311 to spend per student each year, as compared to the lower-performing “successful” districts. See *2016 Finance Study*, p 20. Wealthier districts are also able to provide better school facilities and equipment, which are funded entirely by local property tax revenues. *Michigan School Finance at the Crossroads*, pp 21, 46–51. Because Michigan fails to provide enough state revenue to offset these gaps, levels of funding among school districts vary widely, leaving districts with low property wealth and large numbers of high-need students with far less funding than their more affluent counterparts.

These funding disparities are confirmed by national studies. One study—conducted by the Education Law Center, which is affiliated with *amicus*—ranked Michigan 27th in the nation for school funding as of 2017. Farrie, Kim, & Sciarra, *Making the Grade 2019: How Fair Is School Funding in Your State?* (Newark: Education Law Center, 2019), p 4. Further, the share of Michigan’s gross domestic product that corresponds to public education costs was only \$40 for every \$1,000 generated in economic productivity in 2017, earning Michigan a “C” for its fiscal efforts towards funding public education. See *Making the Grade*, pp 3, 10. As the deficiencies in public school funding continue to grow, “Michigan has gone from being a fairly average state in elementary reading and math achievement to the bottom ten states.” The Education Trust–Midwest, *Michigan’s Talent Crisis: The Economic Case for Rebuilding Michigan’s Broken Public Education System*, <<https://files.eric.ed.gov/fulltext/ED570142.pdf>> (accessed December 26, 2019). Alarming, Michigan ranked last among the fifty states in the growth of education revenue between 2003 and 2015. *Michigan School Finance at the Crossroads*, pp 7, 86. During that same period, Michigan also ranked last in the improvement of student proficiency in reading and math. *Id.*

### 3. High-Need Students Require Higher Levels of Funding

The 2016 Finance Study also demonstrates that the chronic underfunding of Michigan's public schools disproportionately affects districts serving large numbers of high-need students. See *2016 Finance Study*, p 13. The study identified only nine of Michigan's 541 districts in which both the general student population and those with additional needs performed above their respective state averages. *Id.* at 12–13. The difference in spending was stark between those nine districts and the “successful” districts in which high-need students did not perform as well, with the nine districts spending an average of \$3,918 more per student each year. *Id.* at 26.

The 2016 Finance Study recommended an increase in funding for “at-risk” or economically disadvantaged students and English Language Learners (“ELLs”). *Id.* at xi. The study recommended that, for every \$1,000 in baseline per-student spending, Michigan school districts should spend an additional \$300 for each economically disadvantaged student and \$400 for each ELL. *Id.*

The 2018 Resources Report corroborated these findings. In that report, experienced Michigan educators agreed that significant additional resources were required beyond the base cost to address the needs of economically disadvantaged students, ELLs, and students with disabilities. *2018 Resources Report*, p 60. For medium-sized districts, these educators recommended spending an additional \$290 to \$430 per student living in poverty for every \$1,000 spent on a general population student. *Id.* at 60–61. Similarly, for ELLs in medium-sized districts, they recommended additional spending of \$220 to \$510 for every \$1,000 spent on a general population student. *Id.*

The need for increased funding is also imperative given the U.S. Department of Education's 2018 determination that Michigan is the only state in need of federal intervention to ensure students with disabilities are provided an education in compliance with federal law. U.S.

Department of Education, *2018 Determination Letters on State Implementation of IDEA* (2018), p 3, <<https://sites.ed.gov/idea/files/ideafactsheet-determinations-2018.pdf>> (accessed December 26, 2019). A Special Education Task Force chaired by Michigan Lieutenant Governor Brian Calley concluded that Michigan lagged far behind other states in the performance of students with disabilities and echoed concerns about insufficient funding to meet these students' needs. See Special Education Funding Subcommittee, *Special Education Funding Subcommittee Report* (2017), pp 3, 12. The report documented severe deficits in funding of special education services mandated by state and federal law, finding "a \$692 million shortfall in the special education finance system" across the State and recommending steps "be taken today to ensure a brighter tomorrow for *all* students and families in Michigan." *Id.* at 12 (emphasis in original).

Both the 2016 Finance Study and 2018 Resources Report surveyed the research to identify best practices for spending in support of Michigan's high-need students. For example, they noted various studies have shown that hiring additional school counselors, full-time nurses, and instructional coaches for teachers is statistically correlated to improved student attendance and performance. See, e.g., Smith & Sherrod, *School Nurses and Student Absenteeism: The Role of School Nurse Staffing Levels in NC's Efforts to Turn Around Low-Performing Schools* (Raleigh: Public School of North Carolina, 2013); Lapan, Whitcomb & Aleman, *Connecticut Professional School Counselors: College and Career Counseling Services and Smaller Ratios Benefit Students*, 16 Prof Sch Counseling 117, 119–120, 122 (2012); Allen et al., *An Interaction-Based Approach to Enhancing Secondary School Instruction and Student Achievement*, 333 Sci 1034, 1035–1036 (2011). The 2016 Finance Study recommended adding these crucial support resources as an essential strategy to improve the performance of economically disadvantaged students and ELLs. *2016 Finance Study*, pp 48–49. And the 2018 Resources Report identified the need for one full-

time instructional coach for every 200 students in a school, from the elementary to high school level. *2018 Resources Report*, pp 72, 88–90. Thus, evidence-based research demonstrates an urgent need for significantly increased resources for Michigan’s high-need students.

#### **4. Michigan Fails to Equitably Allocate Funding Among Districts**

The 2016 Finance Study analyzed whether Michigan’s school finance system equitably allocates funding and resources after accounting for differences in student need, district characteristics such as population density and enrollment rate, and district revenue-raising capacity. It concluded that Michigan has considerably more variation in per-student revenues and expenditures across districts than is considered “equitable” and that it allocates fewer resources to high-need students. *Id.* at ix, 79. Even more troubling, the 2016 Finance Study found that the trend toward greater inequity was increasing over time. *Id.* An Education Law Center report assigned a “D” letter grade to Michigan’s funding distribution in 2017 due to its failure to allocate more resources for students in high-poverty districts. *Making the Grade*, p 7.

#### **B. Section 152b Would Exacerbate the Chronic Underfunding of Public Schools**

The diversion of public funds to Michigan’s nonpublic schools under Section 152b would violate the plain language of the Constitution that “[n]o public monies or property shall be appropriated or paid . . . directly or indirectly to aid or maintain” nonpublic schools. Const 1963, art 8, § 2. This constitutional violation is even more egregious in light of the numerous studies and reports documenting the severe and chronic underfunding of Michigan’s public schools and the persistent failure to provide all public school students with a meaningful opportunity for academic success. Worse, Section 152b would divert public funds from the State’s budget for public schools to support *nonpublic* schools’ provision of many of the same educational resources and opportunities that their underfunded public school counterparts cannot afford.

For example, the 2016 Finance Study recommended that Michigan school districts improve student performance by hiring more nurses and counselors and by providing coaching for new teachers. See *2016 Finance Study*, pp 47–49. Section 152b would reimburse nonpublic schools for similar costs, such as expenditures related to “[t]eacher certification,” “[c]ertification of [s]chool [c]ounselors,” and “[m]entor teachers for noncertified instructors,” as well as health-related costs, such as “[i]mmunizations,” “[i]mmunization statements and vision screening,” and “[p]ossession/[u]se of inhalers/epinephrine auto-injector.” Michigan Department of Education, *Section 152b Reimbursement Form*, <[https://www.michigan.gov/documents/mde/2018.Section.152b.Reimbursement.Form\\_610867\\_7.xlsx](https://www.michigan.gov/documents/mde/2018.Section.152b.Reimbursement.Form_610867_7.xlsx)> (accessed December 26, 2019). Additionally, Section 152b would divert funds to compensate nonpublic schools for the “hourly wage for the employee or employees performing a task” associated with each of the mandated requirements. See MCL 388.1752b(9); *CAP I*, unpub op at 10; *CAP II*, 326 Mich App at 172 (GLEICHER, J., dissenting in part). Yet recent data show that Michigan public school teachers are paid 80% of the salary paid to other professionals of similar age in the same labor market—a figure that placed Michigan in the lower half of the states for teacher wage competitiveness relative to comparable professions in 2015, a precipitous fall from a rank of 8th in 2012. See Baker, Farrie & Sciarra, *Is School Funding Fair? A National Report Card* (Newark: Education Law Center, 2018), pp 26, 38. The same study linked teacher wage competitiveness with “[a] state’s ability to attract and retain high quality teachers,” which is, in turn, “a fundamental component of a strong and equitable school system.” *Id.* at 23. In the face of a steep decline in the wage competitiveness of Michigan public school teacher salaries, Section 152b would divert funds that could be used to improve that compensation to instead augment the salaries of private school teachers.

This Court has acknowledged that “the continuing effect that underfunding has on the continuing operation” of underfunded school districts results in “innumerable consequences” students must endure. *Durant v Michigan*, 456 Mich 175, 219–220 (1997). This Court has also recognized that the harm to students from underfunding is “real and deserving of relief.” *Id.* at 220. Courts across the country have similarly recognized that increased funding is correlated to improved student outcomes. See, e.g., *Gannon v Kansas*, 305 Kan 850, 899–900 (2017) (affirming that there was “[s]ubstantial evidence . . . demonstrating that student achievement rose when funding increased . . . but eventually fell when funding began to decrease”); *Campaign for Fiscal Equity v New York*, 100 NY2d 893, 919; 801 NE2d 326 (2003) (affirming finding that “increased funding can provide better [inputs], . . . [and] that such improved inputs yield better student performance”); *Brigham v Vermont*, 166 Vt 246, 256; 692 A2d 384 (1997) (“[T]here is no reasonable doubt that substantial funding differences significantly affect opportunities to learn.”); *Abbott v Burke*, 136 NJ 444, 455; 643 A2d 575 (1994) (“[T]here is a significant connection between the sums expended and the quality of the educational opportunity.” (quoting *Robinson v Cahill*, 62 NJ 473, 481; 303 A2d 273 (1973))); *Rose v Council for Better Ed, Inc*, 790 SW2d 186, 197 (Ky. 1989) (“The achievement test scores in the poorer districts are lower than those in the richer districts and expert opinion clearly established that there is a correlation between those scores and the wealth of the district.”); *Edgewood Indep Sch Dist v Kirby*, 777 SW2d 391, 393 (Tex. 1989) (“The amount of money spent on a student’s education has a real and meaningful impact on the educational opportunity offered that student.”).<sup>11</sup>

---

<sup>11</sup> The New Jersey Supreme Court recently acknowledged that the increased funding provided by the State to support the public education of students in the State’s high poverty urban districts “has enabled” those students “to show measurable educational improvement.” *Abbott v Burke*, 196 NJ 544, 549; 960 A2d 360 (2008).

The no-aid clause in the Education Article expressly prohibits the diversion of public funds to nonpublic schools regardless of the performance or quality of Michigan’s public schools. But given the severe resource deficits in far too many of Michigan’s underfunded public schools—indeed, deficits in the very resources Section 152b would fund in nonpublic schools—Section 152b’s violation of the no-aid clause could not be starker.

**CONCLUSION**

For the foregoing reasons, PFPS respectfully requests that this Court reverse the Court of Appeals' erroneous holding that Section 152b of 2016 PA 249 is constitutional.

Respectfully submitted,

By: /s/ Jennifer B. Salvatore

Jennifer B. Salvatore (P66640)  
Salvatore Prescott & Porter, PLLC  
105 E. Main Street  
Northville, MI 48167  
(248) 679-8711

Eric Alan Stone (2943546) (*pro hac vice*)  
Sara E. Hershman (5453840) (*pro hac vice*)  
Melina M. Meneguini Layerenza (5559240) (*pro hac vice*)  
Juan J. Gascon (5646179) (*pro hac vice*)  
Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10019  
(212) 373-3000

Jessica Levin (5482914)  
Wendy Lecker (2283125)  
Education Law Center  
60 Park Place, Suite 300  
Newark, NJ 07102  
(973) 624-1815

*Attorneys for Amicus Curiae*

Dated: December 27, 2019

**CERTIFICATE OF SERVICE**

I hereby certify that on December 27, 2019, I electronically filed the foregoing with the Clerk of the Court using the MiFILE system, which will automatically send notice of electronic filing (NEF) to all registered users listed below:

/s/ Jennifer B. Salvatore

Jennifer B. Salvatore (P66640)  
Salvatore Prescott & Porter, PLLC  
105 E. Main Street  
Northville, MI 48167  
(248) 679-8711