

No. 18-1855/18-1871

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

GARY B.; JESSIE K., a minor, by Yvette K., guardian ad litem;
CRISTOPHER R., a minor, by Escarle R., guardian ad litem; **ISAIAS R.**, a
minor, by Escarle R., guardian ad litem; **ESMERALDA V.**, a minor, by Laura
V., guardian ad litem; **PAUL M.; JAIME R.**, a minor, by Karen R., guardian
ad litem,

Plaintiffs -

Appellants, v.

RICHARD D. SNYDER, Governor; **JOHN C. AUSTIN**, member of MI Bd
of Education; **MICHELLE FECTEAU**, member of the MI Bd of Education;
LUPE RAMOS-MONTIGNY, member of the MI Bd of Education;
PAMELA PUGH, member of the MI Bd of Education; **KATHLEEN N.**
STRAUS, member of the MI Bd of Education; **CASANDRA E. ULBRICH**,
member of the MI Bd of Education; **EILEEN WEISER**, member of the MI
Bd of Education; **RICHARD ZEILE**, member of the MI Bd of Education;
BRIAN J. WHISTON, Superintendent of Public Instruction for the State of
MI; **DAVID B. BEHEN**, Director of the MI Dept of Technology;
NATASHA BAKER, State School Reform/Redesign Officer, in their official
capacities,

Defendants - Appellees.

On Appeal from the United States District Court for the
Eastern District of Michigan, the Honorable Stephen J. Murphy, III,
Presiding
Case No. 2:16-cv-13292

**BRIEF OF AMICUS CURIAE BY THE PULSE INSTITUTE IN SUPPORT
OF APPELLANTS' APPEAL FOR REVERSAL OF ORDER GRANTING
MOTION TO DISMISS**

Tina M. Patterson (MI Bar No. P78492)
THE PULSE INSTITUTE
615 Griswold Street, Suite 700
Detroit, MI 48226
Telephone (313) 800-0142
www.thepulseinstitute.org

Attorney for Amicus Curiae

November 26, 2018

CORPORATE DISCLOSURE

Pursuant to Sixth Circuit Rule 26.1, The PuLSE Institute makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No.

TABLE OF CONTENTS

TABLE OF AUTHORITIES 5-7

INTEREST OF AMICUS CURIAE 8

ARGUMENT 10

 I. Literacy, a globally accepted human right, is an essential component of the right to education and a means to eradicate poverty that must be expressly declared as a fundamental right in the United States of America-..... 10

 A. *Literacy is a global human right as an essential component of the right to education* 10

 B. *Literacy is a legislative tool in the global eradication of poverty*..... 19

 II. Equal protection violated due to the denial of access to literacy for majority African American Detroit schoolchildren 24

 A. *Denial of access to literacy is a historic tool of oppression against African Americans in the United States of America.* 25

 B. *Defendants are legally obligated to provide access to literacy under the equal protection clause, but must also surrender to moral compulsion to do what is right by the Plaintiffs.* 33

CONCLUSION 36

TABLE OF AUTHORITIES

CASES

Brown v. Board of Education,
347 U.S. 483 (1954)..... 31

Brown v. Board of Education,
349 U.S. 294 (1955)..... 32

Davis v. School District of City of Pontiac, Inc.,
309 F. Supp. 734, 742 (E.D. Mi. 1970) 32

Flores v. Arizona,
48 F.Supp.2d 937, 957 n.6 (D.Ariz. 1999) 14, 21

Plessy v. Ferguson,
163 U.S. 537 (1896)..... 32

Sosa v. Alvarez-Machain,
542 U.S. 692 (2004)..... 16

United States v. State of Louisiana,
225 F.Supp. 353, 355 (E.D. La. 1963)..... 29

STATUTES

20 U.S.C. §§ 6301 et. seq., 20 U.S.C. § 6311(a), (b)(1)(A)-(D)..... 14

U.S. Const. amend. XIV, § 1 13

OTHER AUTHORITIES

Alia Wong, *Students in Detroit Are Suing the State Because They Weren't Taught to Read*, The Atlantic, Jul. 6, 2018,
<https://www.theatlantic.com/education/archive/2018/07/no-right-become-literate/564545/>..... 15

Bankole Thompson, *The Moral Injustice of Illiteracy*, Detroit News, Jul. 4, 2018
..... 34, 35

Corey Williams, *Census Figures Show Drop in Detroit Poverty Rate*, The Seattle Times, Sept. 4, 2017 9

Damon J. Keith Collection, *Papers, 1948-2001*
<https://reuther.wayne.edu/files/UP001582.pdf>..... 32

David W. Blight, *Frederick Douglass Prophet of Freedom*, 39 (2018)..... 27, 28

Duncan Lindsay, *Child Poverty and Inequality*, 135 (2009)..... 19

Editorial, *Literacy for All Children Is a Fundamental Right in a Democracy*, Chi. Sun Times, Jul. 6, 2018 18

Emily Campbell, *Cleveland Is Dead Last in Child Poverty*, The Center for Community Solutions, Sept. 17, 2018
<https://www.communitysolutions.com/cleveland-dead-last-child-poverty/>..... 9

Frederick Douglass, Address at the Colored Indus. School at Manassas, Va.: *The Blessings of Liberty and Education* (Sept. 3, 1894) 28, 35

Joseph Stiglitz, *The Price of Inequality*, 217 (2012) 19

Kayla Fontenot, et al., *Income an Poverty in the United States: 2017*, The Center for Community Solutions, Sept. 17, 2018
<https://www.census.gov/library/publications/2018/demo/p60-263.html> 22

Letter from Benjamin Banneker to Secretary of State Thomas Jefferson (Aug. 19, 1791) (on file with The Library of Congress) 26

Literacy As Freedom,
<http://americanexperience.si.edu/wp-content/uploads/2014/09/Literacy-as-Freedom.pdf> (last visited Nov. 23, 2018)..... 27

Malala Yousafzai Biography,
<https://www.biography.com/people/malala-yousafzai-21362253> (last visited Nov. 23, 2018) 17, 18

Malala Yousafzai Facts,
<https://www.nobelprize.org/prizes/peace/2014/yousafzai/facts/> (last visited Nov. 23, 2018)..... 17

Media Advisory, *Wayne State Univ., Former White House Spokesman Robert S. Weiner to Deliver Keynote at National Forum on Obama and Christian Loyalty* (Nov. 7, 2011) (on file with Wayne State Univ.) 8

Mehrsa Baradaran, *The Color of Money: Black Banks and the Racial Wealth Gap* (2017) 25

National Advisory Panel <https://thepulseinstitute.org/national-advisory-panel> (last visited Nov. 23, 2018) 8

Nearly Half of Detroit's Adults Are Functionally Illiterate, Report Finds https://www.huffingtonpost.com/2011/05/07/detroit-illiteracy-nearly-half-education_n_858307.html (last visited Nov. 23, 2018) 23

Nelson Mandela, *Address at the Make Poverty History Campaign* (Feb. 3, 2005) 23, 24

Not Taking Detroit for Granted: Poverty Matters in 2018 Gubernatorial Race <https://thepulseinstitute.org/2018/05/22/not-taking-detroit-for-granted-poverty-matters-in-2018-gubernatorial-race/> (last visited Nov. 23, 2018) 9

Rebecca Caesar, *Frederick Douglass' Relationship with Abraham Lincoln*, University of Rochester Frederick Douglass Project (2005)..... 28, 29

Russell Brooker, *Education for Blacks in the Jim Crow South* (2012) <https://abhmuseum.org/education-for-blacks-in-the-jim-crow-south/> 30

St Kitts and Nevis Health in the Americas, Country Volume (Pan American Health Org.) 2012 at 551 21

U.N. Educ., Scientific and Cultural Org. [UNESCO], Sect. for Basic Educ., *Literacy from a Right to Education Perspective*, 1, (2013) (prepared by Gianna Alessandra Sanchez Moretti and Tobias Frandell)..... 12, 16, 20

Universal Declaration of Human Rights, G.A. Res. 217A, at 4, U.N. GOAR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948)..... 11-13

United States Senate Constitution Day <https://www.senate.gov/artandhistory/history/common/generic/ConstitutionDay.htm> (last visited Nov. 23, 2018) 15

Interest of Amicus Curiae

The PuLSE Institute (Institute for Public Leadership and Social Equity) is an independent, nonpartisan, anti-poverty think tank located in Detroit, Michigan, and inspired by the writings of distinguished journalist and Detroit News columnist Bankole Thompson, a presidential author of two books on former President Barack Obama¹. Thompson's impactful, insightful and impassioned columns and distinctive forums about poverty and racial and economic inequality issues around the nation and in Detroit gave birth to the mission of The Institute, which represents a bold call to action against these inequities.

Although headquartered in Detroit, The PuLSE Institute has a global following, evidenced by our National Advisory Panel². Composed of individuals with a deep commitment to fighting inequality, The Institute's National Advisory Panel members include: Dr. Arun Gandhi, grandson of Mahatma Gandhi and standard bearer of the Gandhi philosophy of nonviolence; Sister Simone Campbell, executive director of NETWORK and one of the nation's leading Catholic voices for equity; Robert S. Weiner, former White House spokesman; Dr. Bernard Lafayette, former top aide to Rev. Martin Luther King and National Coordinator of

¹ Media Advisory, Wayne State Univ., *Former White House Spokesman Robert S. Weiner to Deliver Keynote at National Forum on Obama and Christian Loyalty* (Nov. 7, 2011) (on file with Wayne State Univ.)

² National Advisory Panel <https://thepulseinstitute.org/national-advisory-panel> (last visited Nov. 23, 2018)

the 1968 Poor People's Campaign, a watershed movement of the American Civil Rights Movement; Joan Blaney, British author and advocate for inclusion, honored with the Commander of the Most Excellent Order of the British Empire by the Queen; and Cecilie Palmer, anti-Apartheid activist who helped type the draft of the new South African Constitution ushering in the historic presidency of Nelson Mandela.

While many of the nation's premier think tanks are in top American cities such as New York and Washington DC, The PuLSE Institute is strategically and purposefully located in Detroit because of its dubious distinction of holding the highest poverty rate amongst the largest cities in America, with 35.7% of residents living in poverty³, including nearly half of Detroit's children⁴. Due to these substantial poverty levels, The PuLSE Institute held a gubernatorial town hall on poverty where Gretchen Whitmer, the Governor-elect of Michigan, historically declared she would appoint a cabinet-level Poverty Secretary if elected⁵. That promise by the incoming governor, when fulfilled, will have significant impact in

³ Corey Williams, *Census Figures Show Drop in Detroit Poverty Rate*, The Seattle Times, Sept. 4, 2017

⁴ Emily Campbell, *Cleveland Is Dead Last in Child Poverty*, The Center for Community Solutions, Sept. 17, 2018
<https://www.communitysolutions.com/cleveland-dead-last-child-poverty/>

⁵ Not Taking Detroit for Granted: Poverty Matters in 2018 Gubernatorial Race
<https://thepulseinstitute.org/2018/05/22/not-taking-detroit-for-granted-poverty-matters-in-2018-gubernatorial-race/> (last visited Nov. 23, 2018)

shaping policies that will address the challenges facing the perennial underclass of Detroit.

Necessarily, as the anti-poverty institute located in Detroit and with education axiomatically considered a tool to combat poverty, The PuLSE Institute strongly supports the right to access to literacy for Detroit's children.

For these reasons, with the source of authority to file under Fed. R. App. P. 29(a), The PuLSE Institute respectfully files this amicus brief in support of the appellants. The Institute states under Fed. R. App. P. 29(a)(4)(E) that this brief was not authored, in whole or in part, by counsel for a party, that no monetary contributions were made for the preparation or submission of this brief.

Argument

I: Literacy, a globally accepted human right, is an essential component of the right to education and a means to eradicate poverty that must be expressly declared as a fundamental right in the United States of America.

A: Literacy is a global human right as an essential component of the right to education

On the heels of an Allies victory in WWII, a consequential triumph for liberty and democracy around the world, officials from over 50 countries,

including the United States of America, met to authorize a document that manifested the basis of fundamental freedoms deserving of protection for all humans to enjoy. The year was 1948. That May, Israel declared its independence as a state. In stark contrast, that same month in South Africa, the United Party won election, rising to power to institute racially segregated policies in what became the abhorrent government system of Apartheid. Yet that December, in Paris, France, global dignitaries united to ratify the Universal Declaration of Human Rights. This milestone document, proclaimed by the United Nations General Assembly, has since been translated in over 500 languages, evidence of its global impact and prominence.

The principles expressed within the Declaration are treasured pillars of global freedom, as evidenced in the egalitarian spirit of Article 1 of the Declaration, confidently decreeing that “all human beings are born free and equal in dignity and rights,” and that “they are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” Universal Declaration of Human Rights, G.A. Res. 217A, at 4, U.N. GOAR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948).

The Declaration lists a total of 30 Articles total, but what resonates most significantly for the case currently before this honorable court, however, is Article 26, which expressly declares that “everyone has the right to education,” that “shall

be free, at least in the elementary and fundamental stages,” and “shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms.” *Id.* at 7. Furthermore, the bedrock of education rests principally on the ability to understand, read, write and calculate, essential life skills that translate into the broader term of “literacy.” In fact, a United Nations Educational, Scientific and Cultural Organization (UNESCO) Report on the United Nations Literacy Decade (UNLD) determined since these are foundational skills necessary to exercise the right to education, by extension, literacy can likewise be considered as an essential right. U.N. Educ., Scientific and Cultural Org. [UNESCO], Sect. for Basic Educ., *Literacy from a Right to Education Perspective*, 1, (2013) [hereinafter *Literacy*] (prepared by Gianna Alessandra Sanchez Moretti and Tobias Frandell). In fact, as outlined by the UNESCO report, “because one of the aims of the process of literacy is encouragement to develop and apply basic reading, writing and numeracy skills, which shall in turn prepare individuals to face difficult situations in their everyday lives, there can be no doubt that literacy contributes to the achievement of the principal goal of education as established by the 1948 Universal Declaration of Human Rights, i.e., the full development and realization of individual human beings.” *Id.* at 21.

In contrast, the centuries old Constitution, the primary authority and preeminent document of freedom in the United States, does not expressly guarantee the right to education. However, it reflects many of same fundamental tenets of freedom found in the Universal Declaration of Human Rights. Specifically, UN Declaration Article 3 guarantees the right to life, liberty and security of person, while Article 8 guarantees the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. G.A. Res. 217A, *supra* at 3. In combination, these articles are akin to U.S. Const. amend. XIV, § 1, the due process clause of the 14th Amendment, which guarantees no shall any State deprive any person of life, liberty, or property, without due process of law and brings us to the case that is currently before the court.

Plaintiffs seek to gain access to literacy by declaring it as a fundamental right under the 14th Amendment due process clause. They argue that Defendants have violated this sacred tenet by providing them an education in name only, depriving them of the access to literacy while subjecting them to compulsory school attendance, often in dilapidated and dangerous facilities with outdated and scarce learning materials and lack of adequate instructors. (Complaint, RE 1, Page ID #4, 8-10).

Long debated in the public arena, the issue of whether this great nation, founded on noble ideals of individual rights and liberties, recognizes education, and by extension literacy, as a fundamental right has likewise been debated before the United States Supreme Court. At the apex of the American judicial system, the Supreme Court has recognized the fundamental good and necessity of education, but has never expressly declared that education is a fundamental right.

However, one need not venture outside the three branches of government to support the need to declare education as a fundamental right. While the Supreme Court may have declined this declaration, the United States Congress, arguably the most powerful legislative body in the world, has taken affirmative steps in enacting legislation to extend educational opportunities, demonstrating the universal importance, basic need, and fair and equal access to education.

An example is the 1994 Improving America's Schools Act (IASA) (1994). 20 U.S.C. §§ 6301 et. seq., 20 U.S.C. § 6311(a), (b)(1)(A)-(D). Through this legislation, Congress declared it to be the policy of the United States that a high-quality education for all individuals and a fair and equal opportunity to obtain that education are a societal good and moral imperative, and improve the life of every individual, because the quality of our individual lives ultimately depends on the quality of the lives of others. *Flores v. Arizona*, 48 F.Supp.2d 937, 957 n.6 (D.Ariz. 1999)

Additionally, United States Senate recognizes “The Constitution’s first three words- *We the People*- affirm that the government exists to serve its citizens.⁶” The paramount importance of education also is documented by state laws that provide free access to education through the public school system. As noted in *The Atlantic Magazine*, numerous states across the nation have mimicked at least some guarantee of education such as Arkansas and Delaware, which constitutionally require the provision of “general” or “efficient” education. Colorado and Idaho stipulate that education be “thorough” or “uniform. Specifically, *The Atlantic* reported that one state—Montana—guarantees equality of educational opportunity” for all its residents, and most importantly, requires that all schools provide a sound foundation for literacy in kids’ early years⁷. Given the history of free public school education in this country, there can be no greater service to the people than the freedom of education, which thus enables one to think, speak, and act for the best interest of oneself as well as become an active and engaged citizen in this great democracy.

⁶United States Senate Constitution Day

<https://www.senate.gov/artandhistory/history/common/generic/ConstitutionDay.htm> (last visited Nov. 23, 2018)

⁷ Alia Wong, *Students in Detroit Are Suing the State Because They Weren't Taught to Read*, *The Atlantic*, Jul. 6, 2018,

<https://www.theatlantic.com/education/archive/2018/07/no-right-become-literate/564545/>

As UNESCO concurred, literacy has come to evolve both as a targeted goal and a human entitlement to achieve the full realization of individuals. In other words, literacy is a human right itself. This is evidenced by the prevalent new provisions included in many State constitutions and education laws worldwide. *Literacy, supra* at 22.

While the Universal Declaration of Human Rights is not legally binding, *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004), it is heavily instructive and has been adopted in or influenced by most national constitutions since 1948. Since its ratification, and through international advocacy efforts such as the United Nations Literacy Decade, countries around the world have adopted constitutions that have protected literacy as an essential component of the right to education, including two of the original countries to ratify the Declaration. Afghanistan's Constitution of 2004 obligated the government to implement literacy programs and the Dominican Republic's Constitution of 2010 states that the State shall eradicate illiteracy and ensure education for people with disabilities *Literacy, supra* at 7. Furthermore, Bahrain's Constitution of 2002 specified that the "necessary plan to combat illiteracy is laid down by law," and several other countries including Iraq, Myanmar, Senegal, and South Sudan have adopted constitutions in the literacy decade that place the primary responsibility to eradicate illiteracy on the government. *Id.* at 7-8.

Citizens around the world have suffered great harm to ensure the global human right to education. A remarkable example is that of Malala Yousafzai, who in 2014 made history as the youngest recipient of the Nobel Peace Prize for her “struggle against the suppression of children and young people and for the right of all children to education.”⁸ Malala courageously fought for girls’ right to education in her native Pakistan. This daring advocacy led to an assassination attempt at age 15 in 2012, when a Taliban gunman fired one shot to her head as she was on the bus home returning from school.

Only nine months after an attempt on her life, Malala, just 16 years old, delivered a speech before the United Nations in 2013, where she fearlessly continued her quest against poverty, illiteracy, and terrorism. She issued a call to action, remarking that “The extremists were, and they are, afraid of books and pens. The power of education frightens them. They are afraid of women... Let us pick up our books and pens. They are our most powerful weapons.”⁹ At the speech, then United Nations Secretary General Ban Ki-moon declared July 12th, Malala’s birthday, as “Malala Day” in honor of her leadership and activism to ensure

⁸ Malala Yousafzai Facts, <https://www.nobelprize.org/prizes/peace/2014/yousafzai/facts/> (last visited Nov. 23, 2018)

⁹ Malala Yousafzai Biography, <https://www.biography.com/people/malala-yousafzai-21362253> (last visited Nov. 23, 2018)

education for all children¹⁰. No greater story demonstrates the power of education and cements its place as a necessary human right.

The right to literacy has been legally enforced internationally, often by countries otherwise considered "third world" or "developing countries," placing the United States, a leading global superpower, in an awkward and embarrassing position now that its own citizens, children at that, must petition the court to declare they have not even a right to literacy, but a right to even *access* literacy within their public education system. As poignantly noted by the Chicago Sun Times, "It is a sad comment on our national priorities that anybody had to file this suit. Something is wrong when the argument even has to be made that literacy is an essential need in modern life, and therefore should be treated as a fundamental right." Editorial, *Literacy for All Children Is a Fundamental Right in a Democracy*, Chi. Sun Times, Jul. 6, 2018.

Now comes the time to unequivocally answer the question of whether education, and by extension literacy, is a fundamental right in this country, specifically in this case, whether these Detroit school children have a fundamental access to literacy.

¹⁰ *Id.*

Given the recognition of literacy as a global human right, and as an essential component of the right to education, the answer to this question must be an emphatic and long overdue, *yes*.

B: Literacy is a legislative tool in the global eradication of poverty

Long held as the key to success, education has been cast as one of most effective antidotes to poverty. “One of the central tenets of America’s commitment to children has been the idea of ensuring equal opportunities to all, and “historically, this country has relied upon education as a great equalizer.” Duncan Lindsey, *Child Poverty and Inequality*, 135 (2009).

For generations, the United States has held firm to the ideal that education unlocks human potential and frees one from the shackles of economic misery. This principle has translated into economic theory supporting education as a good public investment, notably advanced by Nobel Peace Prize winning author, Joseph Stiglitz. In his book, *The Price of Inequality*, Stiglitz wrote, “The government could borrow today to invest in its future- for example, ensuring quality education for poor and middle-class Americans” and predicted this would result in a high return on investment. Joseph Stiglitz, *The Price of Inequality*, 217 (2012). If accepted as true, then to the contrary, unequal distribution of resources and lack of

investment in education, is a recipe for failure and will exacerbate rather than resolve the social ill of poverty.

Aligned with this economic theory to invest in public education, the globally recognized right to literacy is commonly utilized as a method to reduce poverty and to protect, fulfill, and promote the creation of opportunities for economic sustainable growth and social mobility. “Thus, education as a right can provide a solid tool in poverty reduction strategies worldwide,” and that because literacy for all is at the heart of basic education for all, “creating literate environments and societies is essential to achieve the goals of eradicating poverty.” *Literacy, supra* at 1.

Literacy is also frequently embedded in policy as a targeted legislative goal to eradicate poverty. In Bolivia, the Avelino Siñani-Elizardo Pérez Education Law No. 70 of 2010 establishes that the Bolivian Education System guarantees the implementation of literacy and post-literacy policies and programs, serving as an example of combating illiteracy, which is associated with extreme poverty, among other social dilemmas. *Id.* at 8. Additionally, the Education Strategic Vision for 2020 of the Lao People's Democratic Republic, the educational vision will focus on eradicating illiteracy among the population by providing people living in absolute poverty with the means of improving their quality of life. *Id.* at 13.

A notable example is the island nation of St. Kitts and Nevis, the birthplace and childhood home of one of the foremost founding fathers of the United States, Alexander Hamilton, the first Treasury Secretary in US history. St. Kitts and Nevis has also made poverty reduction a priority for the government, which devoted twenty percent of gross domestic product (GDP) to social safety, health, and education programs. *St Kitts and Nevis Health in the Americas, Country Volume* (Pan American Health Org.) 2012 at 551. The Education Act of 1975, updated in 2005, mandated compulsory school attendance from 5 to 16 years of age. *Id.* Significantly, this caused high percentages of primary and secondary school gross enrollment, and as a causal link to such educational investment, the country boasts an impressive nearly 97% adult literacy rate. *Id.*

Literacy as a policy method to combat poverty has also been recognized by our own legislative body, the United States Congress, which has verified advantages created by education, and recognized gaps in achievement and the segments of society impacted the most. In enacting the 1994 IASA, Congress determined that “although the achievement gap between disadvantaged children and other children has been reduced by half over the past two decades, a sizable gap remains, and many segments of our society lack the opportunity to become well educated.” *Flores* 48, F.Supp.2d at 957 n.6. Specifically, Congress relayed that “the most urgent need for educational improvement is in schools with high

concentrations of children from low-income families and achieving the National Education Goals will not be possible without substantial improvement in such schools.” *Id.*

However, despite these efforts, and contrary to media coverage and prominent human rights campaigns framing poverty as a third world problem, poverty in the United States is equally pronounced, notwithstanding our stature as a preeminent first world nation. As a leading global superpower, the United States is a well-known distributor of foreign aid to these lesser developed countries around the world, yet one does not need to venture outside the U.S. to distribute aid to those in need.

In a harsh contradiction of the wealth and resources of this nation, the United States refuses to be a benefactor in relieving its own alarming poverty crisis, with the Census reporting nearly 40 million Americans living in poverty¹¹. And of the millions of impoverished in the U.S., no major city has larger population of people living in poverty than right here in Detroit. Given the bleak conditions of poverty within the city, including nearly half of the city’s children living in poverty, the future of the city itself is in jeopardy. Furthermore, literacy is an especially critical and sensitive need in Detroit as a vital tool for self-sufficiency

¹¹ Kayla Fontenot, et al., *Income and Poverty in the United States: 2017*, The Center for Community Solutions, Sept. 17, 2018
<https://www.census.gov/library/publications/2018/demo/p60-263.html>

and economic security because nearly half of its residents are functionally illiterate¹² and thereby shut out of greater opportunity. These inexcusable numbers represent real human lives and threaten the sustainability of the city. Accordingly, it must compel an immediate remedy to reverse the fast-moving downward spiral into the economic and educational dungeons.

Yet despite this bleak reality, these Detroit children, who are compelled to attend school under the laws of the State of Michigan (Complaint, RE 1, Page ID 4), are now told they have no guarantee to learn or access literacy while in school. They have no guarantee that going to school will improve their lot in life, and no support from their State government to provide even the most basic tool vital to education- literacy.

“Overcoming poverty is not a gesture of charity. It is the protection of a fundamental human right, the right to dignity and a decent life.” Nelson Mandela, *Address at the Make Poverty History Campaign* (Feb. 3, 2005), Spoken by international human rights icon Nelson Mandela, he eloquently castigated the global community for unleashing the travesty of poverty among its own people. He continued, stating that “Massive poverty and obscene inequality are such terrible scourges of our times — times in which the world boasts breathtaking advances in

¹² Nearly Half of Detroit's Adults Are Functionally Illiterate, Report Finds https://www.huffingtonpost.com/2011/05/07/detroit-illiteracy-nearly-half-education_n_858307.html (last visited Nov. 23, 2018)

science, technology, industry and wealth accumulation — that they have to rank alongside slavery and apartheid as social evils.” *Id.* Yet among this scolding reprimand were words of hope, as he further stated, “Like slavery and apartheid, poverty is not natural. It is man-made and it can be overcome and eradicated by the action of human beings.” *Id.* Indeed, just as the creation of poverty is man-made, so is the cure, and by numerous global accounts, literacy is one fundamental solution to the eradication of poverty.

The dereliction of responsibility by Defendants to provide access to literacy is an abdication of legal duty, a reprehensible moral failure, and a missed opportunity to render serious good to alleviate the poverty crisis within the city of Detroit. We cannot take a back seat to the quest for literacy when other nations around the world are actively recognizing literacy as a fundamental right and actively utilizing literacy as a policy tool to combat poverty.

The right to literacy is not a novel idea or suspicious ambition to implement with caution. It is a social good, a globally accepted human right, and quite honestly, just plain common sense. Therefore, literacy and the access thereof must firmly be established as a fundamental right in the United States of America.

II: Equal protection violated due to the denial of access to literacy for majority African American Detroit schoolchildren

A: Denial of access to literacy is a historic tool of oppression against African Americans in the United States of America

Full justice demands a recognition of the historic breach of the social contract between America's constitutional democracy and black Americans. And contract breach requires a remedy. Without that recognition, the Constitution itself stands as a roadblock to redress because it demands that all individuals be neither harmed nor benefited based on group characteristics. But it is unfair to be held to a contract that has already been violated. Blacks have been harmed in direct contradiction to the Constitution's promise of equal treatment, yet they still have to contend with its requirement for equal treatment in seeking a remedy. It is indeed time for a new social contract with black Americans that deals honestly with the past breach. We must confront history directly, to recognize the breach, and provide compensation.

Mehrsa Baradaran, *The Color of Money: Black Banks and the Racial Wealth Gap*, 281, (2017)

When analyzing the importance of the access to literacy in the current case before the Court, we must not engage in intellectual dishonesty by ignoring the value of literacy in historic terms of race and race relations in this country. Even as the founding fathers ratified the Constitution of the United States, declaring the right to life, liberty, and the pursuit of happiness, African Americans in this country were principally excluded from these assurances. From the founding of the nation to the end of the Civil War, African Americans in slave states, most prominently in the South, were not recognized as human beings deserving of civil rights, but property to be traded, sold, and inherited. Long considered the original

sin of this country, slavery reigned as a legal institution in the United States until its abolition via the 13th Amendment in 1865.

While few free African Americans lived in the anti-slavery Northern states, regardless of their achievements, they were still relegated to second class citizenship, and therefore not entitled to the full weight of the law or liberties naturally enjoyed by white counterparts. A prominent example is Benjamin Banneker, an African American scientist and author, born free in Maryland in 1731 who was largely self-educated due to the lack or prevention of educational opportunities for African Americans. Notably, in a letter addressed to then Secretary of State Thomas Jefferson dated August 19, 1791, Banneker enclosed a manuscript copy of his first almanac and bemoaned that African Americans “have long been considered rather as brutish than human, and scarcely capable of mental endowments.” Letter from Benjamin Banneker to Secretary of State Thomas Jefferson (Aug. 19, 1791) (on file with The Library of Congress). He then quoted the first lines of the seminal document of freedom authored by Jefferson himself, the Declaration of Independence: “We hold these truths to be self-evident, that all men are created equal,” magnificently critiquing the hypocrisy of the apparently selective application of equality. *Id.*

Banneker, in all his brilliance, was an anomaly as one of the most vital tools of oppression during the antebellum era was the denial of literacy to African

Americans. The criminalization of teaching slaves to be literate was based on fear of education, for if slaves learned to read, they could access information, read books and understand their rights. Additionally, there existed a fear of organization and liberation, for if slaves became literate, they could learn to organize and revolt against the institution of slavery. Slave owners desired to keep their slaves uneducated and powerless because they understood that literacy represented power. Nowhere is this notion more evident than in the aftermath of the infamous slave revolt led by Nat Turner in 1831. Resulting from this insurrection, all slave states except Maryland, Kentucky, and Tennessee passed laws that made it illegal to teach slaves to read and write, with some states even criminalizing teaching any black person to read and write, enslaved or free¹³. Such was the power of the written word.

In fact, a recent biography on legendary 19th century abolitionist, author, orator and former slave Frederick Douglass soundly encapsulated the gravity of teaching literacy to a slave. David W. Blight, *Frederick Douglass Prophet of Freedom*, 39 (2018). When his master's wife, Sophia, was caught teaching Douglass to read, slave master Hugh Auld "rebuked his wife," lambasting (incorrectly) that "literacy was 'unlawful' in Maryland for slaves." *Id.* Most

¹³ Literacy As Freedom, <http://americanexperience.si.edu/wp-content/uploads/2014/09/Literacy-as-Freedom.pdf> (last visited Nov. 23, 2018)

atrociously, Auld claimed “learning would spoil the best nigger in the world,” and feared that before long, the young slave (Douglass) would “want to know how to write.” *Id.*

At that moment, Douglass understood the power of literacy and embraced it the fuel to campaign his historic anti-slavery pursuit. Even near the end of his life, in an 1894 speech, he noted "Without education he lives within the narrow, dark and grimy walls of ignorance. Education, on the other hand, means emancipation. It means light and liberty. It means the uplifting of the soul of man into the glorious light of truth, the light by which men can only be made free." Frederick Douglass, Address at the Colored Indus. School at Manassas, Va.: *The Blessings of Liberty and Education* (Sept. 3, 1894).

Since the founding of this Republic, no American greater epitomizes the importance of literacy than Douglass, whose universal crusade for the freedom of enslaved Africans in America would not have been possible without literacy. If history serves as an instructive lesson for the future, it will behoove this Court to consider how far this nation has come with the contributions of Douglass. Born in bondage, he taught himself how to read and write, spreading his message across the Atlantic in route to becoming arguably one of the most influential Americans to ever live. As testament to his influence, Douglass developed a relationship with President Abraham Lincoln that would influence emancipation of slaves. Rebecca

Caesar, *Frederick Douglass' Relationship with Abraham Lincoln*, University of Rochester Frederick Douglass Project (2005). This watershed moment in American history renders Douglass a Black Founding Father of this nation if there ever was one.

After the abolition of slavery, the denial of access to literacy continued in the Jim Crow era, infamously with literacy tests used as a barrier to the protected right to vote. Since so many African Americans remained illiterate due to refusal to educate, they were effectively barred from participating in fundamental civic duty of voting. Through this denial stemming from the refusal to educate or provide access to literacy, African Americans were effectually deprived of representation in government, unable to advocate for improvement for themselves, and principally excluded from the American democratic experience.

This systemic denial of the sacred civil liberty of voting, with literacy used as the offensive oppressive weapon of choice, is no stranger to the United States Courts. Cognizant of the tactics used to suppress eligible African Americans from voting, federal courts in Southern States such as Louisiana and Mississippi struck down state laws granting voting rights to eligible African Americans contingent upon passing literacy tests. Significantly, in *United States v. State of Louisiana*, 225 F.Supp. 353, 355 (E.D. La. 1963), the court considered the state law in

question “in its historical setting,” striking the test as unconstitutional and evident that it was a “sophisticated scheme to disfranchise Negroes.”

The court carefully, but accurately, identified the denial of voting rights in proper historic context as a suppressive tactic employed to prevent African Americans from being engaged in democracy by denying them opportunity based on literacy. Juxtaposed to the current case before the court, it must not be surmised as mere coincidence or sheer bad luck that students in this case are primarily African Americans now being told they have no right to access to literacy.

Historically, African Americans have not only been denied access to literacy and education, but when provided, they have been subjected to deteriorating school conditions that greatly affect the value and ability to learn. As described by the American Black Holocaust Museum founded by James Cameron, a former Detroit resident and the only known lynching survivor in the United States, schools of Black children in the South during the early 1900s often consisted of untidy and filthy rooms, leaky roofs, overcrowded classrooms, and lack of vital resources such as books, which if were even available, were handed down from white schools¹⁴.

Hardly serendipity, African American children in the current case are experiencing the same environmental and resource inequalities that diminish their

¹⁴Russell Brooker, *Education for Blacks in the Jim Crow South* (2012)
<https://abhmuseum.org/education-for-blacks-in-the-jim-crow-south/>

ability to learn and access literacy in this year 2018. As excruciatingly detailed in Plaintiffs' original complaint, school facilities are not up to code, with leaky ceilings and temperature extremes to the point of illness. (Complaint, RE 1, Page ID 12, 14, 58, 90). Books are scarce and decades long outdated, with donations given by white suburban schools, who enjoy a surplus of supplies. (*Id.* at Page ID 11). Classrooms are overcrowded and teachers are scarce, permitting the legislative consent of noncertified teachers to the shocking reality of a fellow eighth grade student teaching math to classmates for a month when no instructor was available. *Id.* at Page ID 16).

There can be no doubt that Defendants have not only failed to provide Plaintiffs with equal protection under the law, but absolutely and unscrupulously abandoned their responsibility to educate by failing to supply even the most basic necessities of learning. Plaintiffs have not demanded access to a specific curriculum, but for the opportunity to access literacy. Plaintiffs have even offered a suggested, thoroughly researched remedy (*Id.* at Page ID 128-129), but Defendants have dismissed any responsibility to offer anything more than a building named a school, in which students are compelled to attend under law, with no desire by Defendants to provide even a semblance of education to these students. Although separate but equal was resoundingly declared unconstitutional in the landmark and preeminent civil rights case, *Brown v. Board of Education*, 347 U.S. 483 (1954),

judging from the conditions of learning experienced by Plaintiffs in the Detroit School District, one might be under the impression that the separate but equal clause espoused in *Plessy v. Ferguson*, 163 U.S. 537 (1896) remained the law of the land.

As held by legal icon and current Sixth Circuit Court of Appeals Senior Judge Damon J. Keith, “Where a Board of Education has contributed and played a major role in the development and growth of a segregated situation, the Board is guilty of *de jure* segregation.” *Davis v. School District of City of Pontiac, Inc.*, 309 F. Supp. 734, 742 (E.D. Mi. 1970). Judge Keith, a consequential constitutionalist and chair of the Sixth Circuit and Judicial Conference committees commemorating the Bicentennial of the Constitution¹⁵ further determined “When the power to act is available, failure to take the necessary steps so as to negate or alleviate a situation which is harmful is as wrong as is the taking of affirmative steps to advance that situation. Sins of omission can be as serious as sins of commission”. *Davis* 309 F. Supp. at 741-742. With this propelling instruction, there can be no doubt that as properly named amongst the Defendants, the State Board of Education is obligated to remedy the situation. The Board and all other Defendants must now move *with all deliberate speed* (*Brown v. Board of Education*, 349 U.S. 294 (1955)) to rectify

¹⁵ Damon J. Keith Collection, Papers 1948-2001.
<https://reuther.wayne.edu/files/UP001582.pdf>

the inhumane conditions of these students caused by violation of equal protection under the law. To do otherwise would be a gross miscarriage of justice.

B: Defendants are legally obligated to provide access to literacy under the equal protection clause, but must also surrender to moral compulsion to do what is right by the Plaintiffs

As French economist Claude Frederic Bastiat once argued “When law and morality contradict each other, the citizen has the cruel alternative of either losing his moral sense or losing his respect for the law.” Claude Bastiat, *The Law* (1853). While the legal argument of whether Defendants committed an equal protection breach is before the court, the moral case must not be discarded. In fact, the immorality of Defendants’ actions and omissions, and the historic playbook it follows, must compel the Court to declare an equal right to literacy once and for all, which Defendants violated through egregious conduct against a majority African American school district.

In the denial of right to access to literacy as opined by the district court, the Court did not dismiss the factual allegations of the Plaintiffs. On the contrary, the Court expressly accepted the allegations as true (Opinion RE 122, Page ID 2776). These include grisly accounts of heat exhaustion leading to sickness and vomiting,

vermin in the classroom dead or alive, and lack of clean water, if any water at all (Complaint RE 1, Page ID 13-14, 80, 94, 121, 129).

These are not prisoners in Attica or Alcatraz who have committed the most horrific crimes imaginable upon their fellow man, now forced to live the bane of their existence in an equally merciless environment. These are elementary school children, as young as 9 years old, robbed of the opportunity to even play safely outside due to dangerous and injurious playground equipment (*Id.* at Page ID 13). These are high school students, future young leaders who are denied the opportunity to foster their unlimited potential because there are not enough books to even assign them homework to further develop their intellect (*Id.* at Page ID 81). Worst of all, these children must be exposed to these inhumane conditions because they are compelled to do so by state law, or they risk the penalties associated with truancy. (*Id.* at Page ID 4).

Such callous disregard for our children, the most vulnerable segment of our population, the worthiest of our protection and care, must unmistakably shock the conscience of the court. Instead, the district court rendered a decision in support of denial as justified by the law. Yet in analyzing the juxtaposition of law and morality posed by Bastiat, Detroit News columnist Bankole Thompson insightfully noted that “Going by Bastiat’s supposition, being on the right side of the law is not always equivalent to being on the right side of morality. Upholding the law for the

sake of order is not akin to using the law to uplift groups that have historically been oppressed by the law.” Bankole Thompson, *The Moral Injustice of Illiteracy*, Detroit News, July 4, 2018.

One must never forget that slavery was a legal institution. The cruel irony is that over 200 years after the abolition of slavery and its inherent denial of access to literacy, African American school children must now seek court approval for the express right to access the literacy that has long been denied to them, yet never refused to their white counterparts.

“To deny education to any people is one of the greatest crimes against human nature. It is easy to deny them the means of freedom and the rightful pursuit of happiness and to defeat the very end of their being.” Frederick Douglass, Address at the Colored Indus. School at Manassas, Va.: *The Blessings of Liberty and Education* (Sept. 3, 1894). These Detroit children are the byproduct of the black experience in this country, symbolized by none other than Douglass himself. In his era, however, he taught himself to become literate out of necessity because teaching slaves to read and write was expressly outlawed. Today, African American students have access to the doors of education, but it is rendered useless by a firm denial of the right to access literacy. Accordingly, the court must find that Defendants have violated the Plaintiffs’ rights of equal protection under the law.

Conclusion

The judiciary, the independent branch of government that guarantees fairness in the application of law in our democracy, can change the reality for these children and shape the future of education in America through a bold, resonant, precedent-setting decision declaring that the right to literacy, already a globally recognized human right, is indeed a fundamental right in the United States of America. Accordingly, the court must find the Defendants violated this right under the due process and equal protection clauses of the 14th Amendment.

For these reasons, the decision of the district court must be reversed.

Dated: November 26, 2018

/s/Tina M. Patterson
Tina M. Patterson (MI Bar No. P78492)
THE PULSE INSTITUTE
615 Griswold Street, Suite 700
Detroit, MI 48226
(313) 800-0142
www.thepulseinstitute.org

Attorney for Amicus Curiae

CERTIFICATE OF COMPLIANCE

1. This brief complies with the length limitation of Fed. R. App. P. 29(a)(5) and 32(a) (7) because according to the word count feature of Microsoft Word, this brief contains 6,500 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word and typed using Times New Roman 14-point font.

Dated: November 26, 2018

/s/Tina M. Patterson
Tina M. Patterson (MI Bar No. P78492)
THE PULSE INSTITUTE
615 Griswold Street, Suite 700
Detroit, MI 48226
(313) 800-0142
www.thepulseinstitute.org

Attorney for Amicus Curiae

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of November, 2018, I electronically filed the foregoing Brief of *Amicus Curiae* for The PuLSE Institute with the Clerk of the United States Court of Appeals for the Sixth Circuit using the CM/ECF System. All parties are to this case will be served via the CM/ECF system.

Dated: November 26, 2018

/s/Tina M. Patterson
Tina M. Patterson (MI Bar No. P78492)
THE PULSE INSTITUTE
615 Griswold Street, Suite 700
Detroit, MI 48226
(313) 800-0142
www.thepulseinstitute.org

Attorney for Amicus Curiae

DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

| RE # | Description | Date | Page ID# Range |
|-------------|----------------------------------------------------------|-------------|-----------------------|
| 1 | Class Action Complaint | 09/13/2016 | 1-136 |
| 112 | Opinion and Order Granting Defendants' Motion to Dismiss | 06/29/2018 | 2738-2777 |