S.C. 19768	:	
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CONN. COALITION FOR JUSTICE IN EDUCATION FUNDING, INC., ET AL.	:	**SUPREME COURT**
	:	
	:	**OF THE STATE OF CONNECTICUT**
	:	
v.	:	
	:	
GOVERNOR JODI M. RELL, ET AL.	:	**JANUARY 26, 2018**

MOTION FOR RECONSIDERATION

There is no real dispute that thousands of Connecticut students are not obtaining the benefits intended to be afforded by an elementary and secondary school education, and are thus being left unprepared to "perform the basic functions of an adult in our society." The Court determined in this appeal that the judicial system has no place in addressing that state of affairs, since the constitution prescribes only that an opportunity for a minimally adequate education be provided, which it reads the record to confirm is available in this state.

Based on the reasoning of the majority and the record below, that conclusion is at best premature. The trial court repeatedly found disturbing evidence of gross inadequacies of educational resources available to students in many districts and schools although, according to the Court, it mistakenly associated them with policies and standards it should not have analyzed in isolation.

That the trial court erred in its approach does not cause those factual findings to evaporate; they retain their forcefulness as a vivid indictment of the failures of the state's educational system impacting many of our schools. Before consigning thousands of young people to a future shackled by a lack of preparation produced by an ineffective school system, the Court should permit the trial court to consider the findings that so troubled it under the single unified constitutional standard it prescribed here. The Court should also reconsider its rejection of the reading given to this Court's prior opinion in this case by the author of the concurring opinion that the majority declares to constitute binding law.

Brief History

This case was filed on November 21, 2005 by the Connecticut Coalition for Justice in Education Funding, Inc. ("CCJEF") and students and parents in Connecticut schools.[1] The Plaintiffs alleged that the Defendants[2] were violating their rights to suitable, adequate, and substantially equal educational opportunities under article eighth, § 1, and article first, §§ 1 and 20, of the Connecticut Constitution. After extensive motion practice, the Superior Court (*Shortall, J.*) granted the Defendants' motion to strike the Plaintiffs' claims, and the Plaintiffs appealed. On March 30, 2010, this Court reversed the trial court and held that there is a justiciable right, under the Connecticut Constitution, to adequate educational opportunities. *CCJEF I.* Following considerable discovery and additional motion practice on remand, the case was tried over 60 days of evidence beginning January 12, 2016 and ending on June 3. On September 7, the trial court (*Moukawsher, J.*) found Connecticut's educational system unconstitutional, entered partial judgment in favor of the Plaintiffs, and ordered the Defendants to submit plans within 180 days to correct the violations it had identified. The Defendants took this appeal. On January 17, this Court reversed the trial court, and instructed it to enter judgment for the Defendants.

Specific Facts

See the attached Memorandum of Law, including in particular, pp. 5-10.

Legal Grounds

See the attached Memorandum of Law.

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1 CCJEF gratefully acknowledges the efforts of the Education Adequacy Project at Yale Law School, which has been involved with this action since before its inception, and in particular, the current students, Matthew Nguyen, Sesenu Woldemariam, Lydia Fuller, Brandon Levin, Justin Smallwood, Megan Mumford, John Gonzalez, Arjun Ramamurti, and Katrin Marquez, who assisted in the preparation of this motion and attached memorandum of law.

2 The Defendants include the Governor, State Board of Education, Commissioner of the State Board of Education, and the Treasurer and Comptroller of the State of Connecticut.

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MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR RECONSIDERATION

There can be no reasonable doubt that the members of the plurality in *Connecticut Coalition for Justice in Educational Funding v. Rell*, 295 Conn. 240 (2010) ("*CCJEF I*"), endorsed a constitutional standard that is no less broad than that set forth in Justice Palmer's concurrence, as described by Justice Palmer in his dissent here. *See CCJEF v. Rell*, No. 19768, 2018 WL 458864, at *1 (Conn. Jan. 17, 2018) ("*CCJEF II")* (Palmer, J., concurring in part and dissenting in part).

The majority repeatedly emphasizes that Justice Palmer's concurrence is thus the controlling exposition of the governing law. Yet the majority then rejects Justice Palmer's conclusion that the law, as articulated in his *CCJEF I* concurrence, supports a finding that sufficient evidence exists to prove that the state violated its constitutional obligation to provide all children with an opportunity for a minimally adequate education.

If Justice Palmer's concurrence controls this case, as the majority insists, then the majority's contrary ruling is fundamentally mistaken. This paradoxical result is underscored by the appalling state of education in the state's poorest communities, which the trial court thoroughly documented and which the majority does not dispute.

For more than a decade, Plaintiffs have pursued this action to hold the state strictly accountable for its constitutional obligation to afford students their fundamental right to an opportunity to receive an adequate education. They compiled a record replete with evidence that thousands of failing students attend schools impaired by shortages of appropriate teachers and professional support staff, insufficient and outdated instructional

materials and equipment, and unsafe and unsuitable facilities. Before this Court fully and finally dismisses plaintiffs' claims, the importance of plaintiffs' fundamental right deserves unequivocal assurance that the trial court would not find a constitutional violation under article eighth, § 1, when considering the findings discussed separately throughout its opinion under the single legal standard formulated here it should have applied.

I. THE COURT'S CONCLUSION THAT THE TRIAL COURT'S *CFE I* ANALYSIS WAS BASED ON INADEQUACIES IDENTIFIED AT THE SCHOOL AND DISTRICT LEVEL IS UNFOUNDED, REQUIRING ARTICULATION BY THE TRIAL COURT.

"It is the duty of the judge who tried the case to set forth the basis of his decision. An articulation is appropriate where the trial court's decision contains some ambiguity or deficiency reasonably susceptible of clarification." *Rostain v. Rostain*, 213 Conn. 686, 694–95 (1990) (internal quotation marks and citations omitted) (citing *Powers v. Powers,* 183 Conn. 124, 125 (1981) and *State v. Wilson*, 199 Conn. 417, 434-35 (1986)). *See* Practice Book §§ 60-5, 61-10(b). That is this case. The trial court bifurcated its analysis of adequacy, emphasizing the portions of the factual record it deemed most relevant to each branch of its analysis. It focused briefly on aggregate, statewide evidence in concluding that resources were minimally adequate, but detailed substantial district and school level evidence in concluding that certain policies and standards failed to produce minimally adequate educational opportunities.

Now that the Court has declared that the reasonableness of policies is part and parcel of a single standard for determining the minimal adequacy of the state's educational system, 2018 WL 473138, at *24, the factual record likewise should be considered from that unified perspective. It simply cannot be safely assumed that, if undertaking that revised approach, the trial court would come to the same conclusion it had, rather than now seeing the evidence that so troubled it when considering the rationality of state policies proves that the state was not "reasonably meet[ing] the minimal educational needs of the state's students." Id. The trial court should therefore be directed to clarify whether it took into

account the factual record of district- and school-level conditions as part of its *Campaign I* analysis and, to the extent it did not, to do so now in accordance with the holistic approach to adequacy announced by this Court. *See Campaign for Fiscal Equity, Inc. v. State*, 86 N.Y.2d 307 (1995) ("*Campaign I*").

A. The Majority And Dissent Agree That Individual Districts And Schools Are The Appropriate Units Of Analysis.

The Court unanimously premised the constitutional test for minimal adequacy of educational opportunities on the four *Campaign I* factors specifically referenced by both the plurality and concurrence in *CCJEF I*. *See CCJEF II*, slip op. at 16 (majority); *CCJEF II*, slip op. at 2 (Palmer, J., concurring in part and dissenting in part.").[3]

Likewise, all agree that the *Campaign I* analysis requires an examination of the adequacy of individual districts and even schools. The *CCJEF II* majority recognized that the trial court could have found a violation of article eighth, § 1 "if the plaintiffs had established that a *particular school district* did not meet the *Campaign I* criteria." *CCJEF II*, slip op. at 50 n.15 (majority) (emphasis added). Justice Palmer's dissent observed that "the majority properly recognizes that whether the state has satisfied its obligation to afford minimally adequate educational opportunities *may be evaluated on a district-by-district basis, and even at the level of individual schools*; the question is not merely whether Connecticut residents, *in the aggregate*, receive adequate schooling." *CCJEF II*, slip op. at 3 (Palmer, J., concurring in part and dissenting in part) (emphasis added).

B. The Trial Court Did Not Rely on District or School Level Evidence in Applying the *Campaign I* Criteria

Both in tone and content, the trial court's opinion sets forth a dramatically different perception of the condition of Connecticut schools in the section evaluating resources, and

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3 In Section II, movants contend that the majority did not properly apply the holding of *CCJEF I* as set forth by the concurrence there. For purposes of this portion of their motion, however, movants assume that the majority's description of the holding of *CCJEF I* is as set forth in its opinion.

the sections analyzing policies. The factual findings which the trial court's *Campaign I* analysis cited say virtually nothing about conditions in any specific districts or schools. Instead, the trial court states generalizations about Connecticut as a whole: "[t]he *state* spends a billion dollars a year on . . . school buildings," Tr. Op. at 23 (A474), and "[w]hile *statewide* enrollment has been declining for decades, spending on buildings has increased." *Id.* (emphasis supplied) The trial court's conclusions about *Campaign I* adequacy likewise were explicitly made in statewide terms: "There is . . . nothing to suggest a *statewide* failure to provide adequate facilities;" "there is no proof of a *statewide* problem caused by the state sending school districts too little money;" "[n]o one suggests that teaching *in Connecticut* is broadly incompetent" or "that *Connecticut* lacks minimally adequate teaching and curricula." Tr. Op. at 25 (A476).

The only district-level fact which the trial court incorporated into its *Campaign I* analysis was a finding that "the state has committed $378 million to new buildings" in Bridgeport, together with unspecified references to facility problems in Windham and New London that the state might be remedying. Tr. Op. at 23 (A474).

In stark contrast, when it turned to analyzing education policies and standards, the trial court cited multiple findings of fact of inadequate facilities, instrumentalities, curriculum, and teaching in specific schools and districts. Thus, while not juxtaposing it against the foregoing general observations of facilities, the court later detailed a wide range of deficits in Bridgeport, including a shortened school year; increasing class sizes; and a complete lack of school buses. Tr. Op. at 40 (A491). It identified widespread promotion of students without basic skills in Bridgeport, New Britain, New London, and Windham, indicating that those towns' curricula—recognized as an important input in *Campaign I*—were woefully insufficient. Tr. Op. at 56-57 (A507-8). The trial court quantified cuts in state aid "to the state's poorest districts" where funds were "desperately needed." Tr. Op. at 37-38 (A488-89). None of these findings were mentioned, or even alluded to, in the trial court's evaluation of the *CFE I* criteria.

When focusing on districts in identifying policies it believed produced unconstitutional conditions, the trial court came to radically different conclusions than when addressing categories of resources earlier in its opinion when walking through the *Campaign I* factors. For example, the trial court found that Bridgeport schools struggle to cope with a severe shortage of teachers, deficient facilities, and inadequate instrumentalities of learning—all necessary inputs under *Campaign I* analysis but never mentioned in that portion of its opinion. Thus, the trial court specifically took note that:

- The district as a whole cut 73.5 certified staff even as the student population grew. A653 (#589).
- At least 200 Bridgeport teachers leave each year, due in part to poor working conditions and low salaries. A653 (#588).
- One high school completely "lacked mathematics teachers" for the 2015-16 school year and had to reassign a "math coach from the elementary school to provide mathematics instruction." A654 (#597).
- One Bridgeport school has a computer lab of only 24 computers, *none of which* function; even if they did, they "would be insufficient for many of the classes" at the school. A654 (#605).
- Two elementary schools had leaky roofs, radiators, and water fountains that went years without repair—in one case, eleven years and counting. A654 (#601, #602).

These factual findings, which the trial court specifically relied on in analyzing policies, are clearly pertinent under *CFE I.* Yet none of these facts were cited in the trial court's finding of adequacy under *Campaign I*, where they would be expected to have factored into the court's analysis.

The majority opinion does not cure this deficiency when it refers to five of the factual findings in an effort to do so. *CCJEF II*, slip op. at 39 (majority). For example, the majority noted, referring to Bridgeport, that "[a]lthough it may be cause for concern that a school

district or school has filled a small number of teaching positions with substitute teachers for a specified period, that fact does not compel the conclusion that the overall level of teaching in the district or school is inadequate." *Id.* The majority did not weigh that evidence as part of an adequacy analysis against the extensive factual findings, including those listed above, regarding large-scale teacher shortages, staffing cuts, high turnover, and inadequate facilities in which to teach. But that is what the trial court may well have done if it had clearly understood that it was not to conduct an analysis of educational policies separate and apart from assessing resources.

Similarly, while the majority minimized evidence regarding lack of money for library books in East Hartford and texbooks in Danbury High School, it did not consider it in the context of the extensive record of inadequacies in books, supplies, and facilities in both East Hartford and Danbury. For example, the majority opinion does not mention:

- Students in East Hartford have been using the same math textbooks *since 1991*. A663 (#684).
- East Hartford High School is teaching from ten-year-old physical science textbooks and 15-year-old biology textbooks. A664 (#698).
- Danbury has not adhered to "standard procedure" requiring non-fiction books remain current within a *twelve-year* range. A692 (#1,002).
- Danbury schools "have . . . classrooms on wheels" due to space shortages. A692 (#1,005).
- Testimony by Tracy Snyder, a science teacher, about the textbooks at East Hartford High, which serves 400 ninth grade students:

  > [T]he bindings are falling apart, so I keep packing tape in my drawer so I can repair them as best as possible. . . . Some of the books are missing some pages. . . . The physical science book, for example, has a unit all about computers and it shows floppy disks and it doesn't talk about the Internet at all. Trial Tr. 50:14-50:22, 51:6-51:12 (Feb. 17, 2016).[4]

4 The *CCJEF II* majority assumes that the trial court considered district and school level evidence in applying the *Campaign I* standard. "We decline to presume that the trial

Again, the trial court may well have been persuaded that such evidence, when expressly considered as part of its *CFE I* factors analysis, supported a finding of unconstitutionality.

Noticeably absent from the analysis of the *CFE I* factors was any consideration of the testimony from district leaders and educators about the inadequacies that impaired their delivery of an education to their students. Thus, Aresta Johnson testified about the lack of educators to meet the need to teach math and reading to students in the Bridgeport high school. Trial Tr. 98-101 (Jan. 26, 2016); *cf*. *CCJEF II* at *24 ("it is implicit in the *Campaign I* standard that the educational opportunities offered by the state must be sufficient to enable a student who takes advantage of them to attain a level of knowledge of reading, writing, mathematics…."). Superintendent Rabinowitz expanded on the district-wide shortages of teachers in Bridgeport and the impacts on educating students. Trial Tr. 62-63 (Jan. 21, 2016). Teachers from various schools described their inability to educate children because they did not have instructional materials appropriate for them. Tr. Op. at 56-57 (A507-08).[5]

There are scores of factual findings that the trial court made, many contained in its analysis of educational policies, many more contained in the accompanying findings of fact, that revealed serious deficiencies of resources. None of them found their way into the court's application of the *CFE I* criteria. The majority's evaluation of a small sampling of that evidence cannot substitute for the trial court's comprehensive review of the evidence it

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court made 1060 specific factual findings, filling 157 single-spaced pages, only to then conclude that the findings were completely irrelevant to its legal analysis." *CCJEF II*, slip op. 36 (majority). The trial court likely considered them relevant to its decision of policies, where it did refer to them. By contrast, the absence of any discussion by the trial court of such facts as part of the *CFE I* analysis—whether as support for, or evidence refuting, the contention that the constitutional standard was not met—simply cannot allow the Court to make such a critically important assumption to dispose of that claim.

5 It is plainly inadequate to provide college level textbooks to elementary school students. *CCJEF I* at *19. It is no less inadequate, in a more realistic example, to have *no* instructional materials for students suitable to their reading or math levels.

heard, including the witnesses only it observed and whose testimony it weighed. There is simply no assurance that it would reach the same conclusion on the basis of its having conducted five months of live testimony, as would the majority on the basis of an appellate record culled from that trial.

C. Since It Is Unclear Whether The Trial Court Evaluated District Level Evidence Under The Relevant Legal Standard, The Court Should Remand For Clarification.

Reconsideration and articulation are appropriate in this case. "[A]rticulation is appropriate where the trial court's decision contains some ambiguity or deficiency reasonably susceptible of clarification." *Rosatin*, *supra*, 213 Conn. at 694–95. This Court "may remand the case, pursuant to Practice Book § 60-5, for further articulation of the trial court's decision." *Housing Authority v. Charter Oak Terrace/Rice Heights Health Center, Inc.,* 82 Conn.App. 18, 24 (2004); *see also State v. Wilson,* 199 Conn. 417, 434-35 (1986); Practice Book §§ 60-5, 61-10(b).

Here, the majority's explanation of the *Campaign I* framework, and its view that any reasonableness assessment is part of that framework, raises questions as to how the trial court would have viewed the entire record under that single, unified test. Indisputably, the trial court's conclusion that various educational policies were unconstitutional rested largely on findings of inadequacies at the district and school level. That same evidence, however, was not even mentioned as part of its adequacy analysis. This incongruity thus demonstrates a clear "deficiency" in the trial court's legal analysis, even if it used the correct legal standard. At best, the trial court's decision "contains some ambiguity" as to whether such an analysis was applied to the extensive factual findings in the trial record. Given the extreme constitutional importance of this case—in the magnitude of tens of thousands of children and their life-defining educational opportunities—it is proper to request the trial court in this case to resolve the ambiguity and incongruities in its opinion and remedy the apparent deficiency in the adequacy analysis it conducted.

II. THE COURT APPLIED A LEGAL STANDARD NARROWER THAN THE HOLDING OF *CCJEF I.*

Every member of the Court agreed that Justice Palmer's concurrence in *CCJEF I* defines the constitutional standard. Yet, the majority flatly rejects Justice Palmer's conclusion here that the trial court did not apply that standard when it reviewed the evidence. The majority reaches the opposite result by interpreting Justice Palmer's concurrence to require an evaluation only of the generic resources explicitly mentioned in the template found in *Campaign I*, despite his firmly stated view that his concurrence did not contemplate such a limited analysis.

The majority's conclusion is fundamentally wrong. It cannot reasonably justify its decision that the constitutional standard has been met by invoking a controlling concurring opinion in the teeth of an unequivocal statement by the opinion's author that its reading is wrong. The suggestion that Justice Palmer expanded his concurrence, *CCJEF II*, 2018 WL 473138, at *24 n.33, cannot be reconciled with Justice Palmer's disciplined grounding of his dissenting opinion in the language of that concurrence. The sources of the majority's errors are manifest and manifold.

On the most basic level, the majority is wrong to assert that Justice Palmer "did not agree with the qualitative component of the right to free public education under article eighth, § 1, as described in the plurality opinion." *CCJEF II*, 2018 WL 473138, at *9. In fact, as Justice Palmer explains, his disagreement with the plurality in *CCJEF I* was "narrow" and rested on a concern over whether the plurality could be understood as reading the constitution to "guarantee" each student a minimally adequate education, rather than the "opportunity" to receive such an education. *CCJEF II*, 2018 WL 458864, at *2 (Palmer, J., concurring in part and dissenting in part). The dissent does not disavow that distinction. But for that single caveat, Justice Palmer's "understanding of the *Campaign I* test was not—and is not—substantively different from the standard that the plurality articulated in [*CCJEF I*]." *Id.*

Proceeding on that false premise, the majority repeatedly narrows Justice Palmer's concurring opinion. The most dramatic inconsistency is the majority's conclusion that the concurrence ruled out any consideration of the special needs of at-risk students. *See CCJEF II*, 2018 WL 473138, at *23 (plaintiffs' contention that allegations relating to the special needs of at-risk students mean that Justice Palmer intended the trial court to focus on them "simply cannot be squared" with his statement that the constitution does not require schools to overcome every social and personal disadvantage that students have); *id.* at *25 ("[The] dissent has failed to explain why the courts must make this determination [whether the state's offerings are designed to address the basic educational needs of at-risk learners in underprivileged communities] when it agrees that they are barred from requiring the state 'to overcome every serious social and personal disadvantage that students bring with them to school.'").

That conclusion is flatly inconsistent with what the concurring opinion actually said. As Justice Palmer points out in dissent, his *CCJEF I* concurrence was perfectly clear that the state must "tak[e] into account any special needs of a particular local school system." *CCJEF II*, 2018 WL 458864, at *4 (Palmer, J. concurring in part and dissenting in part) (quoting *CCJEF I*, 295 Conn. at 345 n.19 (Palmer, J., concurring)). As the dissent reminds the majority, the concurrence drew that language from Justice Borden's dissent in *Sheff v. O'Neill*, 238 Conn. 1, 143 (1996), which Justice Palmer joined and which expanded on the duty to address the needs of such at-risk student populations. *CCJEF II*, 2018 WL 458864, at *4 (Palmer, J. concurring in part and dissenting in part). That is why the concurrence expressly held that allegations asserting that "many [students] attend schools that do not have the resources necessary to educate their high concentration of poorly performing students" and that the state has failed "to provide the resources necessary to intervene

effectively on behalf of at-risk students" sufficed, if proved, to sustain a finding of unconstitutionally inadequate educational opportunities. *CCJEF I*, 295 Conn. at 347 n.20.[6]

The majority fails to appreciate that its holding constitutes an unequivocal statement to tens of thousands of at-risk youths that their individualized educational needs are constitutionally irrelevant. A legal standard that ignores the needs of Connecticut's diverse student population must necessarily be based on some theoretical average student unimpaired by "social or personal disadvantage[s]."*Cf. CCJEF I*, 295 Conn. at 345 (Palmer, J., concurring). For the majority, if the resources provided are sufficient for children who face no such impediments to learning, then the state's constitutional duty has been met, regardless of those left behind. For districts overwhelmed by the needs of disadvantaged students, who require additional resources to have any real access to an opportunity for a minimally adequate education, the majority's constitutional floor offers them no protection. Neither state education officials nor any expert who testified for defendants took such an extreme view of how little a minimal education required, or of how many of the most vulnerable fell outside its opportunity. The majority here mistakenly reads the *CCJEF I* holding to assert what no knowledgeable educator has.

A second grave error is the majority's insistence that Justice Palmer's concurrence bars courts from even considering educational outputs. *CCJEF II*, 2018 WL 473138, at *22. But as the majority grudgingly concedes, his concurrence never concluded that educational outputs are wholly irrelevant. *Id.* at *23. Justice Palmer's concurrence stated that inputs should be the *primary, but not the exclusive,* focus of educational adequacy analysis.

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6 The majority contends that Justice Palmer's suggestion that these allegations might suffice was simply an acknowledgement that, since his concurrence had established a new standard, plaintiffs deserved a chance to refine their claims to meet that standard. *CCJEF II*, 2018 WL 473138, at *24. That contention is fallacious, insofar as the majority insists that the standard he supposedly announced, as they describe it, did not require the trial court to consider any such evidence. Justice Palmer obviously believed then, as he does now, that such evidence was not only relevant, but could support a finding of a constitutional violation.

CCJEF I, 295 Conn. at 345 n.19 (Palmer, J., concurring). The dissent does not retreat from that emphasis. *See, e.g. CCJEF II*, 2018 WL 458864, at *9 (Palmer, J. concurring in part and dissenting in part).

Rather, the concurrence recognized that evidence of such outputs as achievement test scores—which serve as educators', and indeed the state's, benchmarks for evaluating whether the school system is performing its function—are invaluable *indicators* of where and what kind of inputs are lacking. *Id.*; *CCJEF I*, 295 Conn. at 345 n.19 (Palmer, J., concurring). As the dissent demonstrates, those education metrics document severe underperformance by huge numbers of students in the poor communities that were the focus of plaintiffs' evidence, including Bridgeport, Windham and New Britain. *CCJEF II*, 2018 WL 458864, at *10 (Palmer, J., concurring in part and dissenting in part). The utility of such data, as the dissent recognized, is that they point the court to districts and schools where inputs may not be adequate to their constitutional purpose of effectively preparing students to become "a functional member of society." *CCJEF II,* 2018 WL 473138, at 19. That is precisely the connection that plaintiffs' evidence demonstrated—abundant testimony and data proved that underperforming schools were struggling with deficits of specific inputs that educators confirmed were essential for affording students the opportunity to receive an adequate education.

Again, no education official or expert who testified for either side denied the value of achievement tests or other outcome metrics in assessing the efficacy of the state's delivery of education. Those data are precisely what the state uses to determine where to send money and other inputs that this Court recognizes as the means for satisfying the state's constitutional obligation. Parents, teachers, and government officials across Connecticut—as well as *CCJEF I*'s plurality and concurrence —all look to those results as the measure of whether their schools are fulfilling the state's constitutional duty to offer an adequate

education to all students. The error of the majority's approach is confirmed by its utter isolation in denying the relevance of performance data.[7]

Looking beyond these specific errors, nothing in Justice Palmer's dissent supports the majority's suggestion that he was announcing a "modification" of the holding resulting from his *CCJEF I* concurrence by broadening the *Campaign I* criteria. *CCJEF II*, 2018 WL 473138, at *22. Rather, the dissent explains that the concurring opinion, as written, envisioned a practical examination of how the *Campaign I* components are implemented under particular educational conditions. As the dissent elaborates, the *Campaign I* factors cannot be applied in a vacuum, but must be measured by whether the specific "modalities" of 'educational facilities, instrumentalities, curricula and personnel" are rationally calculated to achieve the purpose of education articulated by the majority. *CCJEF II*, 2018 WL 458864, at *4 (Palmer, J., concurring in part and dissenting in part). The majority acknowledges that "the phrase 'minimally adequate' is not self-defining." *CCJEF II*, 2018 WL 473138, at *19. What the dissent advocates is not changing the test, but simply clothing the skeletal framework of *Campaign I* with some additional contextual fabric as the concurrence anticipated. Evaluating specific educational inputs by their capacity to achieve the goals of education, as informed by the trial record, is precisely the "degree of judgment" that the majority agreed was necessary to determine whether the constitutional standard has been met. *Id.*[8]

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7 In fact, the majority realizes that its position is not realistic. It boldly declares: "In turn, there is no sense in which an education can be considered minimally adequate if a person who has acquired that level of education is unable to perform the basic functions of an adult." How can that standard ever be tested without some objective criteria of whether the person is performing like an adult? And how can it be satisfied in this case when the evidence shows students graduating who are unable to read and do math as a graduate of a high school is expected? Tr. Op. at 50-52 (A501-3).

8 The fact that Justice Palmer's concurrence did not rely on or refer to the subsequent proceedings that followed *Campaign I* does not compel the conclusion that he intended the items specified in *Campaign I* to serve as the literal checklist for meeting the constitutional standard he conceived. As he explains in the dissent, those items are essential, but corollary inputs may well be necessary to make those components serve

To support its view that the dissent has revised the concurrence, the majority seeks to circumscribe Justice Palmer's concurrence by emphasizing his observations there about the need for appropriate judicial deference, avoiding an overly broad test and recognizing the contributing role of exogenous social and economic factors to student success. *CCJEF II*, 2018 WL 458864, at *8 (Palmer, J., concurring in part and dissenting in part). Those comments, however, are principles that informed Justice Palmer's approach to the standard he endorsed, not the elements of the holding itself. The dissent does not retreat from any of those principles, but instead demonstrates how its conclusion that the record could support constitutional violations is consistent with the standard embraced in Justice Palmer's concurrence, as well as the principles upon which it was grounded. By using those principles to embellish Justice Palmer's views, the majority erroneously narrows the holding that the concurrence believed it had set forth, as affirmed by the author himself.

Conclusion

The majority declares that evaluating whether the state has met its constitutional duty to provide the opportunity for a minimally adequate education calls for a "scrupulous examination of the *entire* record." *CCJEF II*, 2018 WL 473138, at *27 (citations omitted) (emphasis added). According to the trial court, the evidence of deficiencies was so profound that it had no choice but to characterize schools as "utterly failing," A498, and to conclude without qualification that for "thousands of Connecticut students, there is no elementary education, and without an elementary education, there is no secondary education." A508.[9] Those are forceful and unequivocal findings of ultimate facts. That they

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the purposes for which they are intended. *See, e.g.*, *CCJEF II*, 2018 WL 458864, at *11 (Palmer, J., concurring in part and dissenting in part).

9 The majority reads this finding to rest on a view that the students at issue are simply not absorbing the educational opportunities offered to them due to external socio-economic disadvantages. *CCJEF II*, 2018 WL 473138, at *24. But stating that "there is no elementary education" literally asserts that the education is not there to be availed. The literal language chosen by the trial court is vindicated by its dire evaluation of the necessary resources missing from schools in Bridgeport and other poor districts. At the

were made in the context of a discussion of the educational policies that the majority has now found misplaced does not detract from their probative value to the *Campaign I* standard that governs constitutional adequacy. Now that the majority has declared that the trial court should have applied a single analytic rubric, the trial court should be afforded the opportunity on remand to consider whether those damning findings suffice to meet this integrated standard.

Respectfully Submitted,

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very least, the blatant inconsistency between those words and findings, and the conclusion that minimally adequate education is provided in those schools, cries out for further explanation by the trial court on the basis of a "scrupulous" review of the entire record.

CERTIFICATE OF COMPLIANCE AND SERVICE

Pursuant to Rule of Appellate Procedure 62-7, I hereby certify that on January 26, 2018, a true and correct copy of the foregoing has been delivered electronically to the last known email addresses of each counsel of record for whom an email has been provided, as indicated below; that the foregoing document has been redacted or does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law; and that the foregoing document complies with all applicable rules of appellate procedure.

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