CASES ARGUED AND DETERMINED

IN THE

# SUPREME COURT

OF THE

# STATE OF CONNECTICUT

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## MILO SHEFF ET AL. *v.* WILLIAM A. O'NEILL ET AL. (15255)

Peters, C. J., and Callahan, Borden, Berdon, Norcott, Katz and Palmer, Js.

The plaintiffs, eighteen schoolchildren residing in the city of Hartford and two neighboring suburban towns, sought declaratory and injunctive relief from the defendants alleging, inter alia, that the defendants the governor, the state board of education and various other state officials, had an obligation under article eighth, § 1, and article first, §§ 1 and 20, of the Connecticut constitution, to remedy alleged educational inequities in the Hartford public schools resulting from racial and ethnic isolation. The trial court determined that the plaintiffs had failed to prove that state action was the "direct and sufficient" cause of the conditions alleged in their complaint and rendered judgment for the defendants. On the plaintiffs' appeal, *held*:

1. The plaintiffs' complaint was justiciable; the text of article eighth, § 1, which assigns to the legislature the affirmative obligation of enacting "appropriate legislation" to ensure that "[t]here shall always be free public elementary and secondary schools in this state," does not deprive the courts of the authority to determine whether that obligation has been fulfilled.
2. The state action doctrine was not a defense to the plaintiffs' claims of constitutional deprivation; if the legislature, which has an affirmative obligation to provide schoolchildren throughout this state with a substantially equal educational opportunity, fails to remedy substantial inequalities in the educational opportunities being afforded to those children, its actions and omissions constitute state action.
3. The school districting and attendance statutes (§§ 10-240 and 10-184) as enforced with respect to the plaintiffs are unconstitutional; the scope of the state's obligation to provide schoolchildren with a substantially equal educational opportunity, as imposed by article eighth, § 1, is

informed by the constitutional prohibition against segregation contained in article first, § 20, to the effect that the existence of severe racial and ethnic isolation in the public school system, regardless of whether it has occurred de jure or de facto, deprives schoolchildren of a substantially equal educational opportunity and requires the state to take further remedial action.

(*One justice concurring separately, three justices dissenting*)

Argued September 28, 1995—officially released July 9, 1996*

Action for a declaratory judgment to determine whether the defendants have failed to provide the plaintiffs with a substantially equal educational opportunity as a result of the alleged segregation by race and ethnicity of students in public schools in the greater Hartford metropolitan area, and for other relief, brought to the Superior Court in the judicial district of Hartford-New Britain at Hartford, and tried to the court, *Hammer, J.*; judgment for the defendants, from which the plaintiffs appealed to the Appellate Court; thereafter, the appeal was transferred to this court, which ordered the parties to stipulate to all undisputed facts and to prepare and submit to the trial court proposed findings of facts that are disputed, and further ordered the trial court to issue findings on each of the disputed facts. *Reversed; judgment directed.*

*Wesley W. Horton*, with whom were *John Brittain*, *Martha Stone*, *Philip D. Tegeler*, *Dennis D. Parker*, pro hac vice, and, on the brief, *Sandra DelValle*, pro hac vice, *Kenneth Kimerling*, pro hac vice, *Wilfred Rodriguez*, *Christopher A. Hansen*, pro hac vice, *Theodore M. Shaw*, pro hac vice, and *Marianne L. Engelman Lid*, pro hac vice, for the appellants (plaintiffs).

*Richard Blumenthal*, attorney general, with whom were *Gregory T. D'Auria*, *Carolyn K. Querijero*, *Bernard F. McGovern, Jr.*, and *Martha Watts Prestley*,

* July 9, 1996, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.



assistant attorneys general, for the appellees (defendants).

*Maurice T. FitzMaurice* and *Carolyn A. Magnan* filed a brief for the city of Hartford et al. as amici curiae.

*Kathryn Emmett*, *Jane W. Glander* and *Elise Mayers Bouchner* filed a brief for the Capitol Region Conference of Churches et al. as amici curiae.

*David S. Golub* and *Jonathan M. Levine* filed a brief for the Connecticut Legislative Black and Puerto Rican Caucus et al. as amici curiae.

*Martin Margulies* filed a brief for the Society of American Law Teachers as amicus curiae.

*Stephen C. Willey*, pro hac vice, and *Michael P. Koskoff* filed a brief for the Connecticut Federation of School Administrators et al. as amici curiae.

PETERS, C. J. The public elementary and high school students in Hartford suffer daily from the devastating effects that racial and ethnic isolation, as well as poverty, have had on their education. Federal constitutional law provides no remedy for their plight. The principal issue in this appeal is whether, under the unique provisions of our state constitution, the state, which already plays an active role in managing public schools, must take further measures to relieve the severe handicaps that burden these children's education. The issue is as controversial as the stakes are high. We hold today that the needy schoolchildren of Hartford have waited long enough. The constitutional imperatives contained in article eighth, § 1,[1] and article first, §§ 1 and 20,[2] of our

[1] The constitution of Connecticut, article eighth, § 1, provides: "There shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation."

[2] The constitution of Connecticut, article first, § 1, provides: "All men when they form a social compact, are equal in rights; and no man or set of men are entitled to exclusive public emoluments or privileges from the community."

state constitution entitle the plaintiffs to relief. At the same time, the constitutional imperative of separation of powers persuades us to afford the legislature, with the assistance of the executive branch, the opportunity, in the first instance, to fashion the remedy that will most appropriately respond to the constitutional violations that we have identified. The judgment of the trial court must, accordingly, be reversed.

## I

## THE HISTORY AND FACTUAL BACKGROUND OF THIS LITIGATION

In their action seeking a declaratory judgment and injunctive relief, the eighteen plaintiffs[2] filed a four count complaint in which they claimed that the defendants[4] had a constitutional obligation, under article

The constitution of Connecticut, article first, § 20, as amended by articles five and twenty-one of the amendments, provides: "No person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise or enjoyment of his or her civil or political rights because of religion, race, color, ancestry, national origin, sex or physical or mental disability."

[2]The eighteen plaintiffs are: Milo Sheff, an African-American child residing in Hartford; Wildalize Bermudez, a Latino child residing in Hartford; Pedro Bermudez, a Latino child residing in Hartford; Eva Bermudez, a Latino child residing in Hartford; Oskar M. Melendez, a Latino child residing in Glastonbury; Waleska Melendez, a Latino child residing in Glastonbury; Martin Hamilton, an African-American child residing in Hartford; Janelle Hughley, an African-American child residing in Hartford; Neiima Best, an African-American child residing in Hartford; Lisa Laboy, a Latino child residing in Hartford; David William Harrington, a white child residing in Hartford; Michael Joseph Harrington, a white child residing in Hartford; Rachel Leach, a white child residing in West Hartford; Joseph Leach, a white child residing in West Hartford; Erica Connolly, a white child residing in Hartford; Tasha Connolly, a white child residing in Hartford; Michael Perez, a Latino child residing in Hartford; and Dawn Perez, a Latino child residing in Hartford.

[4]The defendants are: William O'Neill or his successor as the governor of the state of Connecticut; the state board of education of the state of Connecticut; Abraham Glassman, A. Walter Esdaile, Warren J. Foley, Rita Hendel, John Mannix and Julia Rankin or their successor members of the state board of education; Gerald N. Tirozzi or his successor as the commissioner of education for the state of Connecticut; Francis L. Borges or his successor as the treasurer of the state of Connecticut; and J. Edward Caldwell or his successor as the comptroller of the state of Connecticut.

The plaintiffs expressly disavowed at trial any claim that their constitutional rights had been violated by any acts or omissions on the part of the city of Hartford or its board of education, or on the part of the twenty-one surrounding suburban towns or their boards of education.





eighth, § 1, and article first, §§ 1 and 20, to remedy alleged educational inequities in the Hartford public schools. The trial court denied the defendants' motions to strike the complaint and for summary judgment. After an evidentiary hearing, the court concluded, however, that the plaintiffs had failed to prove that "state action exists under the facts and circumstances of this case," and rendered judgment in favor of the defendants.

### A

The plaintiffs' revised four count complaint alleges that students in the Hartford public schools are burdened by severe educational disadvantages arising out of their racial and ethnic isolation and their socioeconomic deprivation. Seeking declaratory and injunctive relief, each count of their complaint is grounded on the proposition that the defendants have failed to fulfill their state constitutional responsibility to remedy these severe educational disadvantages. Count one alleges that the defendants bear responsibility for the de facto racial and ethnic segregation between Hartford and the surrounding suburban public school districts and thus have deprived the plaintiffs of an equal opportunity to a free public education as required by article first, §§ 1 and 20, and article eighth, § 1. Count two alleges that the defendants have perpetuated the racial and ethnic segregation that exists between Hartford and the surrounding suburban public school districts, and thus have discriminated against the plaintiffs and have failed to provide them with an equal opportunity to a free public education as required by article first, §§ 1 and

20, and article eighth, § 1. Count three alleges that the defendants have failed to provide the plaintiffs with an equal opportunity to a free public education as required by article first, §§ 1 and 20, and article eighth, § 1, because the defendants have maintained in Hartford a public school district that, by comparison with surrounding suburban public school districts: (1) is severely educationally disadvantaged; (2) fails to provide equal educational opportunities for Hartford schoolchildren; and (3) fails to provide a minimally adequate education for Hartford schoolchildren. Count four alleges that the defendants have failed to provide the plaintiffs with a substantially equal educational opportunity as required by Connecticut law, including General Statutes § 10-4a,[5] in violation of the plaintiffs' rights to due process under article first, §§ 8 and 10.[6]

The defendants not only denied the underlying factual and legal premises of the plaintiffs' complaint, but also raised seven special defenses. These defenses alleged that the defendants were not liable because of: (1) sovereign immunity; (2) stare decisis; (3) separation of powers; (4) the lack of a justiciable controversy; (5)

[5] General Statutes § 10-4a provides: "Educational interests of state identified. For purposes of sections 10-4, 10-4b and 10-220, the educational interests of the state shall include, but not be limited to, the concern of the state (1) that each child shall have for the period prescribed in the general statutes equal opportunity to receive a suitable program of educational experiences; (2) that each school district shall finance at a reasonable level at least equal to the minimum expenditure requirement pursuant to the provisions of section 10-262j an educational program designed to achieve this end; and (3) that the mandates in the general statutes pertaining to education within the jurisdiction of the State Board of Education be implemented."

[6] The constitution of Connecticut, article first, § 8, as amended by article seventeen of the amendments, provides in relevant part: "No person shall be compelled to give evidence against himself, nor be deprived of life, liberty or property without due process of law . . ."

The constitution of Connecticut, article first, § 10, provides: "All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay."





the plaintiffs' failure to join necessary parties, including the city of Hartford; (6) the absence of state action; and (7) the unavailability of court-ordered remedies.

The trial court initially denied the defendants' motions to strike and for summary judgment that were premised on these special defenses. After an evidentiary hearing, however, the court ruled in favor of the defendants on their sixth special defense. Relying heavily on principles drawn from federal constitutional law, the court determined that the plaintiffs could not prevail without establishing that state action was the "direct and sufficient cause of the conditions" alleged in their complaint, and concluded that they had failed to prove such causation. Finding no such state action, the court rendered judgment for the defendants without addressing the merits of the constitutional claims asserted by the plaintiffs.

B

Because of the importance of the novel and controversial questions of constitutional law raised in this litigation, pursuant to Practice Book § 4023 and General Statutes § 51-199 (c), we transferred to this court the plaintiffs' appeal from the judgment of the trial court. Noting that the plaintiffs' complaint had been pending since 1989, we held a special hearing, shortly after the appeal had been filed, to order supplementation of the trial record. We directed the parties to prepare a joint stipulation of all relevant undisputed facts and to assist the trial court in making findings of fact on matters upon which the parties could not agree.[7] Our resolution of this appeal has proceeded on the basis of this supple-

[7] We express herewith our sincere appreciation to all counsel for the diligence and the expedition with which they responded to this court's request. Their professionalism is to be commended.

We also express herewith our sincere appreciation to the trial court for the diligence and the expedition with which that court responded to this court's request.

mented record, which the parties and the court promptly prepared in accordance with our order.

C

The stipulation of the parties and the trial court's findings establish the following relevant facts. Statewide, in the 1991–92 school year, children from minority groups constituted 25.7 percent of the public school population. In the Hartford public school system in that same period, 92.4 percent of the students were members of minority groups, including, predominantly, students who were either African-American or Latino.[8] Fourteen of Hartford's twenty-five elementary schools had a white student enrollment of less than 2 percent. The Hartford public school system currently enrolls the highest percentage of minority students in the state. In the future, if current conditions continue, the percentage of minority students in the Hartford public school system is likely to increase rather than decrease. Since 1980, the percentage of African-Americans in the Hartford student population has decreased, while the percentage of Latinos has increased. Although enrollment of African-American students in the twenty-one surrounding suburban towns has increased by more than 60 percent from 1980 to 1992, only seven of these school districts had a minority student enrollment in excess of 10 percent in 1992. Because of the negative consequences of racial and ethnic isolation, a more integrated public school system would likely be beneficial to all schoolchildren.

A majority of the children who constitute the public school population in Hartford come from homes that are economically disadvantaged, that are headed by a single parent and in which a language other than English is spoken. The percentage of Hartford schoolchildren

[8] We use the terms "African-American" and "Latino" because they are the terms that the parties used in their relevant stipulations of fact.



at the elementary level who return to the same school that they attended the previous year is the lowest such percentage in the state. Such socioeconomic factors impair a child's orientation toward and skill in learning and adversely affect a child's performance on standardized tests. The gap in the socioeconomic status between Hartford schoolchildren and schoolchildren from the surrounding twenty-one suburban towns has been increasing. The performance of Hartford schoolchildren on standardized tests falls significantly below that of schoolchildren from the twenty-one surrounding suburban towns.

Directly or indirectly, the state has always controlled public elementary and secondary education in Connecticut. The legislature directs many aspects of local school programs, including courses of study and curricula, standardized testing, bilingual education, graduation requirements and school attendance. Since 1941, as a result of a state statute; see General Statutes § 10-240;[9] the public school district boundaries in Hartford have been coterminous with the boundaries of the city of Hartford. Since at least 1909, as a result of another state statute; see General Statutes § 10-184;[10] schoolchildren

[9] General Statutes § 10-240 provides: "Control of schools. Each town shall through its board of education maintain the control of all the public schools within its limits and for this purpose shall be a school district and shall have all the powers and duties of school districts, except so far as such powers and duties are inconsistent with the provisions of this chapter."

[10] General Statutes § 10-184 provides: "Duties of parents. All parents and those who have the care of children shall bring them up in some lawful and honest employment and instruct them or cause them to be instructed in reading, writing, spelling, English grammar, geography, arithmetic and United States history and in citizenship, including a study of the town, state and federal governments. Each parent or other person having control of a child seven years of age and over and under sixteen years of age shall cause such child to attend a public day school regularly during the hours and terms the public school in the district wherein such child resides is in session, or while the school is in session in which provision for the instruction of such child is made according to law, unless the parent or person having control of such child is able to show that the child is elsewhere receiving equivalent instruction in the studies taught in the public schools."

have been assigned to the public school district in which they reside.

The legislature provides substantial support to communities throughout the state to finance public school operations. State financial aid is distributed so that the neediest school districts receive the most aid. Accordingly, in the 1990–91 and 1991–92 school years, overall per pupil state expenditures in Hartford exceeded the average amount spent per pupil in the twenty-one surrounding suburban towns. The state reimburses Hartford for its school renovation projects at a rate that is considerably higher than the reimbursement rate for the twenty-one surrounding suburban towns.

The state has not intentionally segregated racial and ethnic minorities in the Hartford public school system. Except for a brief period in 1868, no students in Connecticut have intentionally been assigned to a public school or to a public school district on the basis of race or ethnicity.[11] There has never been any other manifestation of de jure segregation either at the state or the local level. In addition to various civil rights initiatives undertaken by the legislature from 1905 to 1961 to combat racial discrimination, the state board of education was reorganized, during the 1980s, to concentrate on the needs of urban schoolchildren and to promote diversity in the public schools. Since 1970, the state has supported and encouraged voluntary plans for increasing interdistrict diversity.

The state has nonetheless played a significant role in the present concentration of racial and ethnic minorities in the Hartford public school system. Although

[11] In 1868, Hartford enacted a town ordinance that assigned African-American students to a specially designated public school. In response to the town ordinance, the General Assembly enacted legislation that provided for open enrollment in all of the state's public schools without regard to race. Public Acts, May Sess., 1868, c. CVIII; see General Statutes § 10-15c.





intended to improve the quality of education and not racially or ethnically motivated, the districting statute that the legislature enacted in 1909, now codified at § 10-240,[12] is the *single most important factor* contributing to the present concentration of racial and ethnic minorities in the Hartford public school system. The districting statute and the resultant school district boundaries have remained virtually unchanged since 1909. The districting statute is of critical importance because it establishes town boundaries as the dividing line between all school districts in the state.

Nonetheless, according to the findings of the trial court, poverty, and not race or ethnicity, is the principal causal factor in the lower educational achievement of Hartford students. The court also found that the Hartford public school system provides its students with a minimally adequate education under article first, §§ 1 and 20, and article eighth, § 1, because, regardless of the comparative levels of achievement between Hartford students and students from the twenty-one suburban towns, the education provided to Hartford students gives them a chance to lead successful lives. It further found that the Hartford public school system provides its students with an equal educational opportunity because they receive resources, educational programs and curricula similar to those received by students in other communities in the state. It then found that school district lines would have to be redrawn in order to remedy effectively the severe racial, ethnic and socioeconomic isolation that exists in the Hartford public school system. In addition to these findings addressed to the plaintiffs' specific legal claims, the court also found that any form of mandatory intervention would have to rely on coercive measures that would not assure educationally desirable outcomes.

[12] See footnote 9.

D

The plaintiffs' appeal challenges the validity of many of the trial court's findings of fact and all of its conclusions of law.[13] The defendants ask us to affirm the judgment of the trial court, by reversing its conclusion that the plaintiffs' complaint is justiciable or by upholding its conclusion that the complaint is barred by an absence of the requisite state action. If we reject these affirmative defenses, the defendants argue that the plaintiffs have failed to establish their claims of law in light of the findings of the trial court. We are unpersuaded by the defendants' affirmative defenses and, on the merits, we reverse the judgment of the trial court.

II

THE AFFIRMATIVE DEFENSES

The defendants renew two affirmative defenses that they raised at trial.[14] They argue that the text of article eighth, § 1, deprives the trial court of jurisdiction to consider whether the plaintiffs are entitled to relief by way of an order to the legislature to provide a remedy for their impaired educational opportunities. They also argue that, even if the trial court had jurisdiction, the plaintiffs cannot recover because they have not alleged that their educational impairment results from intentional state misconduct. We are not persuaded by either of these affirmative defenses.

[13] The plaintiffs have failed to brief and thus have abandoned the fourth count of their complaint that alleges that the defendants have failed to provide the plaintiffs with a substantially equal educational opportunity in violation of article first, §§ 8 and 10. See *In re Bruce R.*, 234 Conn. 194, 215–16, 662 A.2d 107 (1995); *State* v. *Mejia*, 233 Conn. 215, 223 n.13, 658 A.2d 571 (1995).

[14] The defendants have failed to pursue their defenses based on sovereign immunity, stare decisis and the plaintiffs' failure to join necessary parties. We thus deem these claims abandoned and decline to address them.





A

The defendants maintain that the trial court should have dismissed the plaintiffs' complaint because the plaintiffs' claims are nonjusticiable. Granting the plaintiffs the relief they seek would, according to the defendants, require this court to respond to a political question that our constitution has expressly and exclusively entrusted to the legislature. We disagree.

Existing precedents describe the uneasy line that distinguishes between cases that are justiciable and cases that are not. Because of the doctrine of separation of powers, courts do not have jurisdiction to decide cases that involve matters that textually have been reserved to the legislature, such as the implementation of a constitutional spending cap; *Nielsen* v. *State*, 236 Conn. 1, 9–10, 670 A.2d 1288 (1996); or the appointment of additional judges. *Pellegrino* v. *O'Neill*, 193 Conn. 670, 683, 480 A.2d 476, cert. denied, 469 U.S. 875, 105 S. Ct. 236, 83 L. Ed. 2d 176 (1984); see also *Nielsen* v. *Kezer*, 232 Conn. 65, 74, 652 A.2d 1013 (1995). In the absence of such a textual reservation, however, it is the role and the duty of the judiciary to determine whether the legislature has fulfilled its affirmative obligations within constitutional principles. *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 177, 2 L. Ed. 60 (1803); *Pratt* v. *Allen*, 13 Conn. 119, 132 (1839); see *Caldor, Inc.* v. *Thornton*, 191 Conn. 336, 344, 464 A.2d 785 (1983), aff'd, 472 U.S. 703, 105 S. Ct. 2914, 86 L. Ed. 2d 2557 (1985); *Horton* v. *Meskill*, 172 Conn. 615, 625, 649–50, 376 A.2d 359 (1977) (*Horton I*); *Preveslin* v. *Derby & Ansonia Developing Co.*, 112 Conn. 129, 145, 151 A. 518 (1930). "Deciding whether a matter has in any measure been committed by the Constitution to another branch of government, or whether the action of that branch exceeds whatever authority has been committed, is itself a delicate exercise in constitutional interpretation, and is a responsibility of this Court as ultimate inter-

preter of the Constitution." *Baker* v. *Carr*, 369 U.S. 186, 211, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962); see *Massameno* v. *Statewide Grievance Committee*, 234 Conn. 539, 552, 663 A.2d 317 (1995); *Nielsen* v. *Kezer*, supra, 74–75; see also L. Henkin, "Is There a 'Political Question' Doctrine?," 85 Yale L.J. 597, 599–600 (1976); M. Redish, "Judicial Review and the 'Political Question,'" 79 Nw. U.L. Rev. 1031, 1051–60 (1984–1985).

In the context of judicial enforcement of the right to a substantially equal educational opportunity arising under article eighth, § 1, and article first, §§ 1 and 20, justiciability is not a matter of first impression for this court. In *Horton I*, supra, 172 Conn. 615, and *Horton* v. *Meskill*, 195 Conn. 24, 486 A.2d 1099 (1985) (*Horton III*),[15] we reviewed, in plenary fashion,[16] the actions taken by the legislature to fulfill its constitutional obligation to public elementary and secondary schoolchildren. Judicial authority to render these decisions was expressly reaffirmed in *Nielsen* v. *State*, supra, 236 Conn. 9–10, and in *Pellegrino* v. *O'Neill*, supra, 193 Conn. 683.

The defendants do not challenge the continued validity of *Horton I* and *Horton III*, but argue that their claim of nonjusticiability differs. That argument is unavailing. The plaintiff schoolchildren in the present case invoke the same constitutional provisions to challenge the constitutionality of state action that the plaintiff schoolchildren invoked in *Horton I* and *Horton III*. The text of article eighth, § 1, has not changed. Furthermore, although prudential cautions may shed light on the proper definition of constitutional rights and remedies; see *Fonfara* v. *Reapportionment Commission*, 222 Conn. 166, 184–85, 610 A.2d 153 (1992); such cautions do not deprive a court of jurisdiction.

In light of these precedents, we are persuaded that the phrase "appropriate legislation" in article eighth, § 1, does not deprive the courts of the authority to determine what is "appropriate."[17] Just as the legislature has a constitutional duty to fulfill its affirmative obligation to the children who attend the state's public elementary and secondary schools, so the judiciary has a constitutional duty to review whether the legislature has fulfilled its obligation.[18] Considerations of justiciability must be balanced against the principle that every presumption is to be indulged in favor of subject matter jurisdiction. See, e.g., *Federal Deposit Ins. Corp.* v. *Hillcrest Associates*, 233 Conn. 153, 163, 659 A.2d 138

[15] In *Horton* v. *Meskill*, 187 Conn. 187, 445 A.2d 579 (1982) (*Horton II*), we addressed the ability of municipalities to intervene in the litigation arising out of our decision in *Horton I*.

[16] The defendants in *Horton I* originally asserted defenses based on justiciability, sovereign immunity and standing. The trial court ruled against the defendants on the issues of justiciability and standing, but did not address the issue of sovereign immunity. *Horton* v. *Meskill*, 31 Conn. Sup. 377, 389, 332 A.2d 113 (1974). In their appeal to this court, the defendants in *Horton I* did not challenge the trial court's ruling.

The defendants in this case have not challenged the standing of the plaintiffs to bring this action.

[17] *Simmons* v. *Budds*, 165 Conn. 507, 338 A.2d 479 (1973), cert. denied, 416 U.S. 940, 94 S. Ct. 1943, 40 L. Ed. 2d 291 (1974), on which the defendants rely, is not to the contrary. Although, in that case, we rejected a claim that the defendants, various University of Connecticut officials, had violated the constitutional mandate of article eighth, § 2, that the university "shall be dedicated to excellence in higher education," we did so on the merits. We did not hold that the claim was nonjusticiable.

[18] Courts in other jurisdictions overwhelmingly have reached the same conclusion. See, e.g., *Rose* v. *Council for Better Education, Inc.*, 790 S.W.2d 186, 209 (Ky. 1989); *McDuffy* v. *Secretary of Executive Office of Education*, 415 Mass. 545, 610–11, 615 N.E.2d 516 (1993); *Robinson* v. *Cahill*, 69 N.J. 133, 145–47, 351 A.2d 713, cert. denied sub nom. *Klein* v. *Robinson*, 423 U.S. 913, 96 S. Ct. 217, 46 L. Ed. 2d 141 (1975); *Board of Education* v. *Nyquist*, 57 N.Y.2d 27, 39, 439 N.E.2d 359, 453 N.Y.S.2d 643 (1982), appeal dismissed, 459 U.S. 1139, 103 S. Ct. 775, 74 L. Ed. 2d 986 (1983); *Board of Education* v. *Walter*, 58 Ohio St. 2d 368, 383–86, 390 N.E.2d 813 (1979), cert. denied, 444 U.S. 1015, 100 S. Ct. 665, 62 L. Ed. 2d 644 (1980); *Washakie County School District No. 1* v. *Herschler*, 606 P.2d 310, 317–18 (Wyo.), cert. denied sub nom. *Hot Springs County School District No. 1* v. *Washakie County School District No. 1*, 449 U.S. 824, 101 S. Ct. 86, 66 L. Ed. 2d 28 (1980).

(1995); *Simms* v. *Warden*, 230 Conn. 608, 614, 646 A.2d 126 (1994); *State* v. *Metz*, 230 Conn. 400, 410, 645 A.2d 965 (1994); *Tolly* v. *Dept. of Human Resources*, 225 Conn. 13, 29, 621 A.2d 719 (1993); see also *United States Dept. of Commerce* v. *Montana*, 503 U.S. 442, 459, 112 S. Ct. 1415, 118 L. Ed. 2d 87 (1992). In this case, our precedents compel the conclusion that the balance must be struck in favor of the justiciability of the plaintiffs' complaint.

B

The defendants maintain that even if the plaintiffs' claims are justiciable, the plaintiffs are not entitled to judicial relief because the educational disparities of which they complain do not result from the requisite state action. The plaintiffs claim that the state bears responsibility to correct the constitutional violations alleged in their complaint because of the state's failure to "take corrective measures to [e]nsure that its Hartford public schoolchildren receive an equal educational opportunity."[19] That failure is actionable, according to the plaintiffs, because of the state's knowledge of the racial and ethnic isolation in the Hartford schools, combined with the state's extensive involvement in the operations of Connecticut's public schools and the impact of state statutes mandating school attendance within statutorily defined school districts. General Statutes §§ 10-184 and 10-240.[20] The defendants maintain, to the contrary, that the state's constitutional duty to provide for the elementary and secondary education of Connecticut schoolchildren is triggered only by state action that is alleged to be intentional state misconduct. The trial court relied on the absence of such intentional state

[19] The plaintiffs also claim that the trial court improperly failed to find that the state actively contributed to the allegedly unconstitutional conditions that exist in the Hartford public school system. We find no merit to this claim.

[20] See footnotes 9 and 10.





action in denying relief to the plaintiffs. We disagree with the trial court's decision.

The defendants' argument, derived largely from principles of federal constitutional law, founders on the fact that article eighth, § 1, and article first, §§ 1 and 20, impose on the legislature an *affirmative* constitutional obligation to provide schoolchildren throughout the state with a substantially equal educational opportunity. *Horton I*, supra, 172 Conn. 648–49. It follows that, if the legislature fails, for whatever reason, to take action to remedy substantial inequalities in the educational opportunities that such children are being afforded, its actions and its omissions constitute state action.

The affirmative constitutional obligation that we recognized in *Horton I* and *Horton III*, and reaffirmed recently in *Moore* v. *Ganim*, 233 Conn. 557, 595–96, 660 A.2d 742 (1995), was not premised on a showing that the legislature had played an active role in *creating* the inequalities that the constitution requires it to redress. In *Horton I*, we determined that the state's educational financing scheme was unconstitutional even though it was facially nondiscriminatory and even though the disparities resulting therefrom had not been created intentionally by the legislature. These constitutionally unacceptable disparities developed, instead, "from the circumstance that over the years there [had] arisen a great disparity in the ability of local communities to finance local education," and from the legislature's failure to consider "the financial capability of [each] municipality . . . ." *Horton I*, supra, 172 Conn. 648. In declaring this statutory scheme unconstitutional in *Horton I*, and in requiring further remedial action in *Horton III*, supra, 195 Conn. 38, 43–44, we necessarily determined that the state's failure adequately to address school funding inequalities constituted the state action that is the constitutional prerequisite for affording judicial relief.

The claims now before us likewise implicate the legislature's affirmative constitutional obligation to provide a substantially equal educational opportunity to all of the state's schoolchildren. The plaintiffs document the existence of an extensive statutory system developed in response to the legislature's plenary authority over state public elementary and secondary schools.[21] As a general matter, the plaintiffs challenge the failure of the legislature to address continuing unconstitutional inequities resulting, de facto, from that scheme. In addition, and more specifically, they point to two statutes that directly impact on their claims of constitutional deprivation. State law sets the borders of school districts to coincide with town boundaries; General Statutes § 10-240;[22] and requires all children to attend public school within the district in which they reside. General Statutes § 10-184.[23] The trial court expressly found that the enforcement of these statutes constitutes the "single most important factor" creating the present racial and

[21] In fulfillment of its constitutional mandate to provide for the education of the state's youth, the legislature has developed a detailed and comprehensive educational system. For example, the state identifies the educational interests that must be implemented by the local school boards; General Statutes §§ 10-4a and 10-4b; sets the minimum length of the school year; General Statutes § 10-15; sets the minimum length of the school day; General Statutes § 10-16; generally prescribes particular courses of study; General Statutes §§ 10-16b, 10-18 and 10-19; requires bilingual education under some circumstances; General Statutes § 10-17a; regulates special education programs; General Statutes §§ 10-76b and 10-76d; regulates teacher certification; General Statutes § 10-145b; requires attendance in the school district in which a student resides; General Statutes § 10-184; prescribes requirements for high school graduation; General Statutes § 10-221a; and regulates the suspension and expulsion of students. General Statutes §§ 10-233c and 10-233d. Although the legislature has delegated the day-to-day functioning of the state's public elementary and secondary schools to towns; General Statutes §§ 10-220 (defining duties of boards of education), 10-240 (providing town control of public schools within town boundaries) and 10-241 (defining powers of school districts); the legislature retains and exercises broad statutory authority in discharging its responsibility to meet the demands of the Connecticut constitution.

[22] See footnote 9.

[23] See footnote 10.





ethnic imbalance in the Hartford public school system.[24] The failure adequately to address the racial and ethnic disparities that exist among the state's public school districts is not different in kind from the legislature's failure adequately to address the "great disparity in the ability of local communities to finance local education" that made the statutory scheme at issue in *Horton I*, supra, 172 Conn. 648, unconstitutional in its application.[25]

The defendants maintain, however, that the logic of this inference is undermined by certain other precedents of this court. The defendants rely particularly on *Savage* v. *Aronson*, 214 Conn. 256, 571 A.2d 696 (1990), in which we concluded that the state's failure to provide emergency housing to recipients of federal welfare benefits did not constitute state action. Although we recognized that the absence of emergency housing might

[24] The significance of this finding is not diminished by the trial court's finding that "social and demographic forces generated by the collective exercise of personal geographic preferences over which the state had no control" had contributed to the imbalance. Multiple factors may have significant impacts on the creation or perpetuation of a condition.

[25] Courts in other jurisdictions have reached the same conclusion without directly addressing the state action question. Faced with state constitutional provisions that set forth an affirmative obligation to provide public education, these courts have determined that legislative inaction with respect to the constitutional obligation may give rise to liability. "The General Assembly must not only establish the system [of common schools], but it must monitor it on a continuing basis so that it will always be maintained in a constitutional manner." *Rose* v. *Council for Better Education, Inc.*, 790 S.W.2d 186, 211 (Ky. 1989); see, e.g., *McDuffy* v. *Secretary of Executive Office of Education*, 415 Mass. 545, 606, 615 N.E.2d 516 (1993) ("[T]he Commonwealth has a duty to provide an education for *all* its children, rich and poor, in every city and town . . . . While it is clearly within the power of the Commonwealth to delegate some of the implementation of the duty to local governments, such power does not include a right to abdicate the obligation imposed . . . by the Constitution. [Emphasis in original.]"); *Seattle School District No. 1* v. *State*, 90 Wash. 2d 476, 523, 585 P.2d 71 (1978) ("[T]he fact that the Legislature possesses an ultimate obligation to act is not to say that it may act or not act as it chooses. The duty to act as well as the duty to do so within the parameters of [the constitution] is constitutionally required.").

have a deleterious impact on the opportunity of children to attend school, we held that this secondary effect was not a sufficient basis for imposing constitutional liability upon the state. See id., 286–87. *Savage*, however, sheds no light on the state action requirement in this case because, as we explained in *Savage*; see id., 284–86; the state has no affirmative constitutional obligation to provide emergency housing, while it does have an affirmative constitutional obligation with respect to public elementary and secondary education.

The defendants also invoke two cases in which this court declined to find state action because the pertinent actors were *private parties* rather than the *state itself*. In *Lockwood* v. *Killian*, 172 Conn. 496, 504–505, 375 A.2d 998 (1977), we concluded that private discrimination by the testator of a scholarship fund who had restricted its beneficiaries on the basis of religion did not constitute state action. In *Cologne* v. *Westfarms Associates*, 192 Conn. 48, 64–66, 469 A.2d 1201 (1984), we concluded that the governmental regulation and public use of a private shopping mall did not transform the mall owners' refusal to allow political speech within the mall into state action. Although this aspect of the state action doctrine arguably is related to the question before us; see *Lebron* v. *National R.R. Passenger Corp.*, U.S. , 115 S. Ct. 961, 964–65, 130 L. Ed. 2d 902 (1995); it cannot be controlling in a case in which action or inaction by the state is directly implicated.

In addition to these state cases, the defendants urge us to follow federal precedents that concededly require, as a matter of federal constitutional law, that claimants seeking judicial relief for educational disparities pursuant to the equal protection clause of the fourteenth amendment to the United States constitution must prove intentional governmental discrimination against a suspect class. See, e.g., *Freeman* v. *Pitts*, 503 U.S. 467, 494, 112 S. Ct. 1430, 118 L. Ed. 2d 108 (1992) ("[o]nce





the racial imbalance due to the de jure violation has been remedied, the school district is under no duty to remedy imbalance that is caused by demographic factors"); *Pasadena City Board of Education* v. *Spangler*, 427 U.S. 424, 434, 96 S. Ct. 2697, 49 L. Ed. 2d 599 (1976) (United States constitution is not violated in absence of segregative efforts by state); *Milliken* v. *Bradley*, 418 U.S. 717, 746–47, 747 n.22, 94 S. Ct. 3112, 41 L. Ed. 2d 1069 (1974) ("[t]he suggestion . . . that schools which have a majority of [African-American] students are not 'desegregated' . . . however neutrally the district lines have been drawn and administered, finds no support in our prior cases"); cf. *Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252, 264–65, 97 S. Ct. 555, 50 L. Ed. 2d 450 (1977); *Washington* v. *Davis*, 426 U.S. 229, 242, 96 S. Ct. 2040, 48 L. Ed. 2d 597 (1976). According to the defendants, because the plaintiffs raise claims of unconstitutional disparities in educational opportunities on the basis of severe racial and ethnic imbalances among school districts, the plaintiffs, too, must prove intentional state action.[26]

For two reasons, we are not persuaded that we should adopt these precedents as a matter of state constitutional law. First and foremost, the federal cases start from the premise that there is no right to education under the United States constitution. *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1, 35, 93 S. Ct. 1278, 36 L. Ed. 2d 16 (1973). Our Connecticut constitution, by contrast, contains a fundamental right to education and a corresponding affirmative state obligation to implement and maintain that right. See *Moore* v. *Ganim*, supra, 233 Conn. 595–96; *Broadley* v. *Board of*

[26] The federal precedents are unclear as to whether they require a showing of discriminatory intent to prove state action, or whether state action and discriminatory intent are independent requirements for proving a violation of the federal equal protection clause.

*Education*, 229 Conn. 1, 6, 639 A.2d 502 (1994); *Horton I*, supra, 172 Conn. 645. Second, the federal cases are guided by principles of federalism as "a foremost consideration in interpreting any of the pertinent constitutional provisions under which [a court] examines state action." (Internal quotation marks omitted.) *San Antonio Independent School District* v. *Rodriguez*, supra, 44; see generally L. Tribe, American Constitutional Law (2d Ed. 1988) § 18-2, p. 1691. As the United States Supreme Court noted, "it would be difficult to imagine a case having a greater potential impact on our federal system than the one now before us, in which we are urged to abrogate systems of financing public education presently in existence in virtually every State." *San Antonio Independent School District* v. *Rodriguez*, supra, 44. Principles of federalism, however, do not restrict *our* constitutional authority to enforce the constitutional mandates contained in article eighth, § 1, and article first, §§ 1 and 20.

Federal constitutional law, furthermore, has not invariably required intentional state action as a requisite foundation for constitutional remedies. In cases involving the fundamental right to vote, the United States Supreme Court has held state action to be implicated by the legislature's failure to take the proper steps to implement its affirmative constitutional duty. See *Reynolds* v. *Sims*, 377 U.S. 533, 561–63, 568, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964); see also *Board of Estimate* v. *Morris*, 489 U.S. 688, 692–93, 109 S. Ct. 1433, 103 L. Ed. 2d 717 (1989); *Tashjian* v. *Republican Party of Connecticut*, 479 U.S. 208, 227, 107 S. Ct. 544, 93 L. Ed. 2d 514 (1986); *Abate* v. *Mundt*, 403 U.S. 182, 185–86, 91 S. Ct. 1904, 29 L. Ed. 2d 399 (1971); *Moore* v. *Ogilvie*, 394 U.S. 814, 818, 89 S. Ct. 1493, 23 L. Ed. 2d 1 (1969); *United States* v. *Classic*, 313 U.S. 299, 318–19, 61 S. Ct. 1031, 85 L. Ed. 1368 (1941).[27] We can perceive no principled distinction between judicial intervention to require legislative action to protect the fundamental right to vote and judicial intervention to require legislative action to protect the fundamental right to a substantially equal educational opportunity.

In summary, under our law, which imposes an affirmative constitutional obligation on the legislature to provide a substantially equal educational opportunity for all public schoolchildren, the state action doctrine is not a defense to the plaintiffs' claims of constitutional deprivation. The state had ample notice of ongoing trends toward racial and ethnic isolation in its public schools, and indeed undertook a number of laudable remedial efforts[28] that unfortunately have not achieved their desired end. The fact that the legislature did not affirmatively create or intend to create the conditions that have led to the racial and ethnic isolation in the Hartford public school system does not, in and of itself,

[27] The United States Supreme Court has never retreated from its holding in *Reynolds*. See *Shaw* v. *Reno*, 509 U.S. 630, 639–40, 113 S. Ct. 2816, 125 L. Ed. 2d 511 (1993) (citing *Reynolds* affirmatively); *Burson* v. *Freeman*, 504 U.S. 191, 199, 112 S. Ct. 1846, 119 L. Ed. 2d 5 (1992) (same); *Board of Estimate* v. *Morris*, supra, 489 U.S. 692–94 (extending principle set forth in *Reynolds* to elections of members of board of estimate). The court recently has addressed two other evils that violate the fourteenth amendment to the United States constitution and threaten the right to vote: the dilution of the voting potential of minorities; see *Mobile* v. *Bolden*, 446 U.S. 55, 66, 100 S. Ct. 1490, 64 L. Ed. 2d 47 (1980); and the separation of voters into districts by race. See *Miller* v. *Johnson*, U.S. , 115 S. Ct. 2475, 2483, 132 L. Ed. 2d 762 (1995); *Shaw* v. *Reno*, supra, 641–42. In these cases, the court has required a showing of some form of intent in order to establish a constitutional claim. See *Shaw* v. *Reno*, supra, 644–45, 649 (requiring proof that classification was motivated by racial purpose, although showing can be inferential if district lines are "unexplainable on grounds other than race"); *Mobile* v. *Bolden*, supra, 67–68 (requiring intent to discriminate).

[28] See General Statutes § 10-226a et seq. (requiring public schools within districts to be racially balanced); General Statutes § 10-264a et seq. (promoting educational diversity through voluntary development and implementation of interdistrict educational programs). In addition, the state has provided financial support and technical assistance to voluntary interdistrict transfer programs, has provided technical assistance to intradistrict magnet schools and has authorized special bond funding for the construction and renovation of interdistrict magnet schools.

relieve the defendants of their affirmative obligation to provide the plaintiffs with a more effective remedy for their constitutional grievances.

III

THE PLAINTIFFS' CONSTITUTIONAL CLAIMS

We turn now to the merits of the plaintiffs' claims. No statute, no common law precedent, no federal constitutional principle provides this state's schoolchildren with a right to a public education that is not burdened by de facto racial and ethnic segregation. The plaintiffs make no such claim. The issue that they raise is whether they have stated a case for relief under our state constitution, which was amended in 1965 to provide both a right to a free public elementary and secondary education; Conn. Const., art. VIII, § 1; and a right to protection from segregation. Conn. Const., art. I, § 20. This issue raises questions that are difficult; the answers that we give are controversial. We are, however, persuaded that a fair reading of the text and the history of these amendments demonstrates a deep and abiding constitutional commitment to a public school system that, in fact and in law, provides Connecticut schoolchildren with a substantially equal educational opportunity. A significant component of that substantially equal educational opportunity is access to a public school education that is not substantially impaired by racial and ethnic isolation.

Our analysis of this issue has three parts. First, what are the constituent elements of the affirmative constitutional mandate to provide all public schoolchildren with a substantially equal educational opportunity in the context of alleged racial, ethnic and socioeconomic disparities? Second, does the plaintiffs' complaint encompass these elements? Third, have the plaintiffs proven their claim?





A

Since *Horton I*, it is common ground that the state has an affirmative constitutional obligation to provide all public schoolchildren with a substantially equal educational opportunity. *Horton I*, supra, 172 Conn. 648–49; see also *Benjamin* v. *Bailey*, 234 Conn. 455, 461–62, 662 A.2d 1226 (1995); *New Haven* v. *State Board of Education*, 228 Conn. 699, 707–708, 638 A.2d 589 (1994); *Horton III*, supra, 195 Conn. 34–35. Any infringement of that right must be strictly scrutinized. *Horton I*, supra, 646.

The issue presented by this case is whether the state has fully satisfied its affirmative constitutional obligation to provide a substantially equal educational opportunity if the state demonstrates that it has substantially equalized school funding and resources. The defendants urge us to adopt such a limited construction of our constitution. The plaintiffs, to the contrary, urge us to adopt a broader formulation. They argue that the combination of "racial segregation, the concentration of poor children in the schools, and disparities in educational resources . . . deprive [Hartford schoolchildren] of substantially equal educational opportunities." We agree with the plaintiffs in part. We need not decide, in this case, the extent to which substantial socioeconomic disparities or disparities in educational resources would themselves be sufficient to require the state to intervene in order to equalize educational opportunities. For the purposes of the present litigation, we decide only that the scope of the constitutional obligation expressly imposed on the state by article eighth, § 1, is informed by the constitutional prohibition against segregation contained in article first, § 20. Reading these constitutional provisions conjointly, we conclude that the existence of extreme racial and ethnic isolation in the public school system deprives schoolchildren of a substantially equal educa-

tional opportunity and requires the state to take further remedial measures.

Two factors persuade us that it is appropriate to undertake a conjoint reading of these provisions of our state constitution. One is the special nature of the affirmative constitutional right embodied in article eighth, § 1. The other is the explicit prohibition of segregation contained in article first, § 20.

The affirmative constitutional obligation of the state to provide a substantially equal educational opportunity, which is embodied in article eighth, § 1, differs in kind from most constitutional obligations. Organic documents only rarely contain provisions that explicitly require the state to act rather than to refrain from acting. See *Moore* v. *Ganim*, supra, 233 Conn. 557. As we observed, however, in *Horton I*, supra, 172 Conn. 645, "educational equalization cases are 'in significant aspects sui generis' and not subject to analysis by accepted conventional tests or the application of mechanical standards. The wealth discrimination found among school districts differs materially from the usual equal protection case where a fairly defined indigent class suffers discrimination to its peculiar disadvantage. The discrimination is relative rather than absolute." See also *Horton III*, supra, 195 Conn. 35. Nothing in the description of the relevant legal landscape in any of our cases suggests that the constitutional right that we articulated in *Horton I* was limited to school financing.

For Connecticut schoolchildren, the scope of the state's constitutional obligation to provide a substantially equal educational opportunity is informed and amplified by the highly unusual[29] provision in article

[29] The only other constitutions that explicitly prohibit segregation are those of Hawaii and New Jersey.

The constitution of Hawaii, article first, § 9, provides: "No citizen shall be denied enlistment in any military organization of this State nor be segregated therein because of race, religious principles or ancestry." No court has undertaken to interpret this provision.



first, § 20, that prohibits segregation not only indirectly, by forbidding discrimination, but directly, by the use of the term "segregation." The section provides in relevant part: "No person shall be denied the equal protection of the law *nor be subjected to segregation* or discrimination . . . because of . . . race [or] . . . ancestry . . . ." (Emphasis added.)

The express inclusion of the term "segregation" in article first, § 20, has independent constitutional significance. The addition of this term to the text of our equal protection clause distinguishes this case from others in which we have found a substantial equivalence between our equal protection clause and that contained in the United States constitution.[30] *Broadley* v. *Board of Education*, supra, 229 Conn. 8 n.15; *Franklin* v. *Berger*, 211 Conn. 591, 594 n.5, 560 A.2d 444 (1989); *Keogh*

The constitution of New Jersey, article first, paragraph 5, provides: "No person shall be denied the enjoyment of any civil or military right, nor be discriminated against in the exercise of any civil or military right, nor be segregated in the militia or in the public schools, because of religious principles, race, color, ancestry or national origin." No court has confronted the issue of whether this provision *requires* the state to prevent de facto segregation within its public school system. The Supreme Court of New Jersey has held that the state commissioner of education and local boards of education have broad statutory authority, especially in light of the constitutional provision against segregation in schools, to *prevent* the implementation of local decisions that would increase racial imbalance. See, e.g., *Jenkins* v. *Township of Morris School District*, 58 N.J. 483, 506-508, 279 A.2d 619 (1971) (holding that commissioner may prevent withdrawal of town's children from particular high school and enrollment in different high school if that change would result in increase in racial imbalance in those schools); *Booker* v. *Board of Education*, 45 N.J. 161, 178, 212 A.2d 1 (1965) (holding that commissioner, in reviewing local desegregation plan, must determine if plan takes sufficient and proper steps toward desegregation); *Morean* v. *Board of Education*, 42 N.J. 237, 242-44, 200 A.2d 97 (1964) (supporting decision of town board of education to allocate children among different schools in manner designed to prevent exacerbation of racial imbalance after board decided to close one junior high school).

[30] The fourteenth amendment to the United States constitution provides in relevant part: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

v. *Bridgeport*, 187 Conn. 53, 66, 444 A.2d 225 (1982). Fundamental principles of constitutional interpretation require that "[e]ffect must be given to every part of and each word in our constitution . . . ." *Cahill* v. *Leopold*, 141 Conn. 1, 21, 103 A.2d 818 (1954); *State* v. *Gethers*, 197 Conn. 369, 386, 497 A.2d 408 (1985); *Stolberg* v. *Caldwell*, 175 Conn. 586, 597–98, 402 A.2d 763 (1978), appeal dismissed sub nom. *Stolberg* v. *Davidson*, 454 U.S. 958, 102 S. Ct. 496, 70 L. Ed. 2d 374 (1981). In other cases, we have held that, insofar as article first, § 20, differs textually from its federal counterpart, its judicial construction must reflect such a textual distinction. See *AFSCME, Council 4, Local 681, AFL-CIO* v. *West Haven*, 234 Conn. 217, 221 n.6, 661 A.2d 587 (1995) (per curiam); *Daly* v. *DelPonte*, 225 Conn. 499, 513, 624 A.2d 876 (1993).

The issue before us, therefore, is what specific meaning to attach to the protection against segregation contained in article first, § 20, in a case in which that protection is invoked as part of the plaintiff schoolchildren's fundamental affirmative right to a substantially equal educational opportunity under article eighth, § 1. In concrete terms, this issue devolves into the question of whether the state has a constitutional duty to remedy the educational impairment that results from segregation in the Hartford public schools, even though the conditions of segregation that contribute to such impairment neither were caused nor are perpetuated by invidious intentional conduct on the part of the state.

Linguistically, the term "segregation" in article first, § 20, which denotes "separation,"[31] is neutral about seg-

[31] "Segregation" refers to the "act or process of separation"; Black's Law Dictionary (6th Ed. 1990); or to "the separation or isolation of a race, class, or ethnic group by . . . divided educational facilities, or by other discriminatory means . . . ." Webster's Third New International Dictionary (1961); see Merriam-Webster's Collegiate Dictionary (10th Ed. 1993).





regative intent. The section prohibits segregation that occurs "*because of* religion, race, color, ancestry, national origin, sex or physical or mental disability"; (emphasis added); without specifying the manner in which such a causal relationship must be established.

Whatever this language may portend in other contexts, we are persuaded that, in the context of public education, in which the state has an affirmative obligation to monitor and to equalize educational opportunity, the state's awareness of existing and increasing severe racial and ethnic isolation imposes upon the state the responsibility to remedy "segregation . . . because of race [or] . . . ancestry . . . ."[32] We therefore hold

[32] Neither *Broadley* v. *Board of Education*, supra, 229 Conn. 1, nor *Savage* v. *Aronson*, supra, 214 Conn. 256, is inconsistent with our constitutional analysis in this case. Neither case dealt with the particular combination of constitutional provisions on which the present plaintiffs rely.

In *Broadley*, we concluded that the state's special education statutes; General Statutes § 10-76a et seq.; had not established a constitutional right to an individualized educational program for gifted children. We held that "when neither the legislature nor the framers of our constitution have vested in gifted children any right to an individualized education program, we cannot conclude that the plaintiff's right to a free public education under article eighth, § 1, of the Connecticut constitution includes a right to a special education program." *Broadley* v. *Board of Education*, supra, 229 Conn. 8. Gifted children are not expressly recognized as a cognizable constitutional class within article first, § 20.

In *Savage* v. *Aronson*, supra, 214 Conn. 287, we concluded that the constitutional right to a substantially equal educational opportunity does not include "any [guarantee] that children are entitled to receive their education at any particular school or that the state must provide [emergency] housing accommodations for them and their families close to the schools they are presently attending." In the absence of a claim of racial or ethnic isolation, the housing disparities that underlay this claim are not expressly encompassed by article first, § 20.

The only decision of our sister states to which the parties draw our attention neither supports nor weakens our analysis. In *NAACP* v. *Dearborn*, 173 Mich. App. 602, 615–16, 434 N.W.2d 444 (1988), appeal denied, 433 Mich. 906, 447 N.W.2d 751 (1989), the Michigan Court of Appeals determined that the plaintiffs need not show a discriminatory intent or purpose in order to prove a violation of the prohibition against racial discrimination embodied in that state's constitution. In *Dearborn*, the Michigan court interpreted an equal protection provision that, without containing an express antisegrega-

that, textually, article eighth, § 1, as informed by article first, § 20, requires the legislature to take affirmative responsibility to remedy segregation in our public schools, regardless of whether that segregation has occurred de jure or de facto.

The history of the promulgation of article eighth, § 1, and article first, § 20, supports our conclusion that these constitutional provisions include protection from de facto segregation, at least in public schools. That history includes not only the contemporaneous addition, in 1965, of these two provisions to our constitution, but also the strong commitment to ending discrimination and segregation that is evident in the remarks of the delegates to the 1965 constitutional convention.

First, it is undisputed that the duty to provide a public education contained in article eighth, § 1, and the prohibition against segregation contained in article first, § 20, were proposed to and adopted by the voters of this state in response to the constitutional convention of 1965. When the convention delegates debated the desirability of both amendments to our state constitution, they recognized and endorsed the landmark decision in *Brown* v. *Board of Education*, 347 U.S. 483, 495, 74 S. Ct. 686, 98 L. Ed. 873 (1954), declaring the unconstitutionality of "separate but equal" public school education. See 2 Proceedings of the Connecticut Constitutional Convention of 1965, p. 691, remarks of Chase G. Woodhouse.[33] The primary motivation for the addition of article eighth, § 1, to the constitution in 1965 appears to have been the realization that Connecticut

tion clause, imposed an affirmative obligation on the state to prevent discrimination.

[33] Woodhouse stated: "[W]e have to realize that today the philosophy of segregation is something that is in the minds of all of us. It would be regrettable if it should be in any way suggested that this Constitution did not unequivocally oppose the philosophy and the practice of segregation." 2 Proceedings, supra, p. 691.





was the only state in the nation that did not provide any express right to public elementary and secondary education in its constitution. See 3 Proceedings, supra, pp. 1039–40, remarks of Simon J. Bernstein.[34] The delegates' expectation that the proposed amendments to the constitution would secure interrelated constitutional rights was underscored by Bernstein's remark that article first, § 20, was intended to be applied in the context of the "rights of freedom in education." 2 Proceedings, supra, p. 694.

Second, it is significant that the debate over the amendment of article first, § 20, manifested the intention of the convention delegates to extend broad protection to all persons from all forms of racial and ethnic discrimination and segregation. The debate over the express inclusion of the term "segregation" focused not on whether including such a term might reach too far, but rather on whether it might invite too narrow a construction of the prohibition against discrimination. It was for this reason that the rules committee felt that language regarding segregation was unnecessary. 2 Proceedings, supra, p. 692, remarks of Chief Justice Raymond E. Baldwin. The convention delegates' decision nonetheless to retain the term "segregation"[35] was

[34] In support of the amendment, Bernstein stated: "In July I submitted a resolution No. 109 which pertained to the subject of education, actually it was the only resolution I did introduce and the statement of purpose of that resolution of mine was that our system of free public education have a tradition acceptance on a par with our bill of rights and it should have the same Constitutional sanctity. It was because our Constitution had no reference to our school system that I submitted my resolution and of course others were aware of the same omission in our Constitution and other similar resolutions were submitted. I became aware of this in the decade of the fifties when I served on a board of education . . . . [W]e have [had] good public schools so that this again is not anything revolutionary, it is something which we have, it is which is [in] practically all Constitutions in the States of our nation and Connecticut with its great tradition certainly ought to honor this principle." 3 Proceedings, supra, p. 1039.

[35] The provision when introduced on the convention floor stated: "No person shall be denied the equal protection of the law, nor the enjoyment

premised on the acknowledged importance of unequivocal opposition to all that is encompassed by this invidious philosophy and practice. See 2 Proceedings, supra, pp. 690–92, remarks of Chase G. Woodhouse and James J. Kennelly.[36] In effect, the convention delegates inserted into article first, § 20, constitutional language that was intended to prohibit not only discrimination, but also segregation on the basis of race or ethnicity.[37]

Finally, the convention delegates' manifest intent that article first, § 20, by prohibiting segregation, should pro-

of his civil or political rights, nor be discriminated against in the exercise thereof because of religion, race, color, ancestry or national origin." Rules Committee Substitute for Constitutional Convention Resolution No. 168, File No. 7.

The amendments proposed by Woodhouse and others during the proceedings of the constitutional convention changed the provision to state, as it does today: "No person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise of and the enjoyment of his civil or political rights . . . ." 2 Proceedings, supra, p. 690.

[36] Woodhouse stated: "It would seem that this language as offered in the amendment is sufficiently general so that it would not be interpreted as an exclusion or limit [on] rights. I think we all realize that rights of individuals in this country have developed and have changed from time to time, and we certainly would not want to have in our Constitution any language that would in the future perhaps limit new rights. On the other hand we have to realize that today the philosophy of segregation is something that is in the minds of all of us. It would be regrettable if it should be in any way suggested that this Constitution did not unequivocally oppose the philosophy and the practice of segregation." 2 Proceedings, supra, p. 691. These sentiments were echoed by Kennelly, who stated: "It is further a broad statement of principle that is all inclusive and would provide a complete umbrella for the total protection against discrimination and . . . segregation, which is sound symbolic language." 2 Proceedings, supra, p. 692.

Mary B. Griswold remarked on the same issue that "it was very important to have the word segregation in our new amended bill of rights" and Meade H. Alcorn remarked that "the amendment offered this morning is a worthy addition to" the provision. 2 Proceedings, supra, pp. 693–94.

[37] We note that at the time of the constitutional convention of 1965, it was jurisprudentially unclear whether the principles enunciated in *Brown* v. *Board of Education*, supra, 347 U.S. 483, would be limited to de jure segregation in the public schools. See *Booker* v. *Board of Education*, 45 N.J. 161, 168–70, 212 A.2d 1 (1965); see also *Jenkins* v. *Township of Morris School District*, 58 N.J. 483, 497–98, 279 A.2d 619 (1971) (comparing lower





vide "total protection against discrimination"; 2 Proceedings, supra, p. 692, remarks of James J. Kennelly; supports our conclusion that they intended to encompass de facto segregation in the circumstances presented by the present case. If significant racial and ethnic isolation continues to occur within the public schools, for which the legislature has an affirmative constitutional obligation to provide a substantially equal educational opportunity, no special showing of an invidious segregative intent is required.

It would be illogical not to prohibit all such segregation in light of the legislature's otherwise comprehensive assumption of responsibility for the education of Connecticut schoolchildren. The legislature has created the current school districts, has required students to attend school and has determined which students will attend a particular school district. General Statutes §§ 10-184 and 10-240. The state cannot now avoid its responsibilities by invoking constitutional restraints articulated for different purposes under different constitutional provisions.

Sound principles of public policy support our conclusion that the legislature's affirmative constitutional responsibility for the education of all public schoolchildren encompasses responsibility for segregation to which the legislature has contributed, even unintentionally. The parties agree, as the trial court expressly found, that racial and ethnic segregation is harmful, and that integration would likely have positive benefits for all children and for society as a whole. Further, as the trial court also expressly found, the racial and ethnic isolation of children in the Hartford schools is likely to worsen in the future.

Racial and ethnic segregation has a pervasive and invidious impact on schools, whether the segregation

federal court cases decided between 1966 and 1971 with United States Supreme Court cases decided in 1971).

results from intentional conduct or from unorchestrated demographic factors. "[S]chools are an important socializing institution, imparting those shared values through which social order and stability are maintained." *Plyler* v. *Doe*, 457 U.S. 202, 222 n.20, 102 S. Ct. 2382, 72 L. Ed. 2d 786 (1982). Schools bear central responsibility for "inculcating [the] fundamental values necessary to the maintenance of a democratic political system . . . ." *Ambach* v. *Norwick*, 441 U.S. 68, 77, 99 S. Ct. 1589, 60 L. Ed. 2d 49 (1979). When children attend racially and ethnically isolated schools, these "shared values" are jeopardized: "If children of different races and economic and social groups have no opportunity to know each other and to live together in school, they cannot be expected to gain the understanding and mutual respect necessary for the cohesion of our society." (Internal quotation marks omitted.) *Jenkins* v. *Township of Morris School District*, 58 N.J. 483, 498, 279 A.2d 619 (1971). "[T]he elimination of racial isolation in the schools promotes the attainment of equal educational opportunity and is beneficial to all students, both black and white." *Lee* v. *Nyquist*, 318 F. Sup. 710, 714 (W.D.N.Y. 1970), aff'd without opinion, 402 U.S. 935, 91 S. Ct. 1618, 29 L. Ed. 2d 105 (1971). Our state constitution, as amended in 1965, imposes on the state an affirmative obligation to respond to such segregation.

B

Having concluded that the provisions of article eighth, § 1, as informed by article first, § 20, permit a state constitutional challenge to substantial disparities in educational opportunities resulting from racially and ethnically segregated public schools, we turn now to an examination of the plaintiffs' pleadings to determine whether they fairly can be read to encompass such a challenge. Because the remedies sought by the plaintiffs in their complaint are not differentially tied to the various substantive claims that they have alleged, the plaintiffs can succeed if any of their claims falls within the constitutional right as we have defined it. We are persuaded that the plaintiffs' pleadings cross this threshold.





In the first count of their complaint, the plaintiffs relied on article first, §§ 1 and 20, and article eighth, § 1, for what they have characterized as a per se claim that they have suffered from unconstitutional segregation.[38] In the second count, the plaintiffs alleged that disparities in the racial and ethnic composition of Hartford public schools as compared with schools in the surrounding school districts violated their constitutional rights under the same constitutional provisions.[39] These two counts can reasonably be construed to state a constitutional claim of school segregation as we have defined it. Both counts allege a deprivation of the plaintiffs' right to a substantially equal educational opportunity expressly predicated upon the severe racial and ethnic isolation that exists in the Hartford public school system. The constitutional implications raised by these allegations were fully argued before the trial court, and were fully briefed by the parties before this court. Under

[38] The first count of the plaintiffs' complaint claims: "Separate educational systems for minority and non-minority students are inherently unequal.

"Because of the de facto racial and ethnic segregation between Hartford and the suburban districts, the defendants have failed to provide the plaintiffs with an equal opportunity to a free public education as required by [a]rticle [f]irst, §§ 1 and 20, and [a]rticle [e]ighth, § 1, of the Connecticut [c]onstitution, to the grave injury of the plaintiffs."

[39] The second count of the plaintiffs' complaint claims: "Separate educational systems for minority and non-minority students in fact provide to all students, and have provided to plaintiffs, unequal educational opportunities.

"Because of the racial and ethnic segregation that exists between Hartford and the suburban districts, perpetuated by the defendants and resulting in serious harm to the plaintiffs, the defendants have discriminated against the plaintiffs and have failed to provide them with an equal opportunity to a free public education as required by [a]rticle [f]irst, §§ 1 and 20, and [a]rticle [e]ighth, § 1[,] of the Connecticut [c]onstitution."

these circumstances, we conclude that the plaintiffs' pleadings, with respect to counts one and two, state a claim for the deprivation of a substantially equal educational opportunity. We would be remiss in the exercise of our constitutional obligation to provide "remedy by due course of law . . . without . . . delay"; Conn. Const., art. I, § 10; if we were to deprive the plaintiffs of a remedy solely because, as a pleading matter, their claims were stated in two counts rather than combined in one.[40]

In the third count of the plaintiffs' complaint, they invoked article first, §§ 1 and 20, and article eighth, § 1, for a different purpose. They alleged that the defendants have failed to provide schoolchildren in the Hartford public school system with the educational resources necessary to obtain a minimally adequate education. As pleaded in their complaint and as argued before the trial court, this claim was not expressly predicated upon the severe racial and ethnic isolation that exists in the Hartford public school system. Moreover, at oral argument, the plaintiffs conceded that they had never claimed, either at trial or in their appellate brief, that the opportunity to participate in a racially and ethnically diverse education is a constitutionally required component of a minimally adequate education. Accordingly, we conclude that the third count of the plaintiffs' complaint does not implicate the constitutional right to a substantially equal educational opportunity as defined in part III A. Because, however, the plaintiffs' remedial claims do not depend upon the validity of the third

[40] Contrary to the suggestion of the dissent, this is not a case in which further briefing was required. Unlike the cases on which the dissent relies, the constitutional provisions that are crucial to our holding have been at center stage in this case since its inception. It cannot come as a surprise to anyone that this litigation is grounded on the interrelationship between article first, §§ 1 and 20, and article eighth, § 1.





count of their complaint, we need not reach the merits of this claim.[41]

C

The final issue before us is whether, in light of the findings of the trial court, some of which the plaintiffs deem erroneous, the plaintiffs have proven a violation of their fundamental right, under the state constitution, to a substantially equal educational opportunity that is free from substantial racial and ethnic isolation. We conclude that they have done so.

"[I]n Connecticut the right to education is so basic and fundamental that any infringement of that right must be strictly scrutinized." *Horton I*, supra, 172 Conn. 646; *Horton III*, supra, 195 Conn. 35. Proper evaluation of the plaintiffs' claims is best pursued in accordance with the methodology that we adopted and applied in *Horton III*, supra, 38–39. This methodology requires us to balance the legislature's affirmative constitutional obligation to provide all of the state's schoolchildren with a substantially equal educational opportunity against the legislature's recognized significant discretion in matters of public elementary and secondary education.

The analysis that we adopted in *Horton III* to scrutinize legislation that allegedly infringes upon the fundamental right to education requires a three-step process:

[41] The plaintiffs have abandoned the claim contained in the fourth and last count of their complaint. See footnote 13.

Significantly, the plaintiffs have never claimed, either at trial or in this court, that the state has deprived them of a substantially equal educational opportunity by reason of the funding that the state provides to supplement the Hartford property tax. Specifically, the plaintiffs have never argued that the funding provided by the state does not sufficiently balance any deficiency in the funding provided through the local property tax. See *Horton I*, supra, 172 Conn. 633. The parties stipulated that the state formula for distributing state aid to local school districts "provide[s] the most state aid to the neediest school districts."

"First, the plaintiffs must make a prima facie showing that the disparities . . . are more than de minimis in that the disparities continue to jeopardize the plaintiffs' fundamental right to education. If they make that showing, the burden then shifts to the state to justify these disparities as incident to the advancement of a legitimate state policy. If the state's justification is acceptable, the state must further demonstrate that the continuing disparities are nevertheless not so great as to be unconstitutional." Id., 38; see also id., 45, 45 n.25. Applying the parties' stipulated facts and the trial court's factual findings to this analytical framework, we are persuaded that the current school assignment scheme, principally embodied in §§ 10-184 and 10-240, violates the plaintiffs' fundamental right to a substantially equal educational opportunity.

The plaintiffs have shown, and the defendants do not contest, that the disparities in the racial and ethnic composition of public schools in Hartford and the surrounding communities are more than de minimis. While children from minority groups constituted 25.7 percent of the statewide public school population in the 1991–92 school year, 92.4 percent of the children in the Hartford public school system were members of minority groups, including, predominantly, students who were either African-American or Latino. The percentage of minority students enrolled in Hartford's public schools has since increased. In the 1994–95 school year, 94.5 percent of the children in the Hartford public school system were members of minority groups.[42] Moreover, the Hartford public school system currently enrolls the highest percentage of minority students in the state, and this percentage is likely to become even higher in the future, if current conditions continue. These disparities jeopardize the plaintiffs' fundamental right to education.

[42] We take judicial notice; see *Joe's Pizza, Inc.* v. *Aetna Life & Casualty Co.*, 236 Conn. 863, 873 n.14, A.2d (1996); *Stamford Hospital* v. *Vega*, 236 Conn. 646, 655 n.8, 674 A.2d 821 (1996); of the statistics compiled by the Hartford board of education pursuant to General Statutes § 10-220 (c). Hartford School District Strategic School District Profile (1994–1995).





The defendants stress that the trial court also made extensive findings about the significant role that adverse socioeconomic conditions play in the difficulties encountered by Hartford schoolchildren. Although the findings of the trial court are supported by credible evidence, they do not undermine the plaintiffs' claim. It is well established, under prevailing principles governing the law of equal protection, that poverty is not a suspect classification. *Moscone* v. *Manson*, 185 Conn. 124, 130, 440 A.2d 848 (1981); see *Harris* v. *McRae*, 448 U.S. 297, 323, 100 S. Ct. 2671, 65 L. Ed. 2d 784 (1980). The plaintiffs have not brought an equal protection claim challenging these principles.

The trial court's findings simply demonstrate that Hartford's schoolchildren labor under a dual burden: their poverty *and* their racial and ethnic isolation. These findings regarding the causal relationship between the poverty suffered by Hartford schoolchildren and their poor academic performance cannot be read in isolation. They do not diminish the significance of the stipulations and undisputed findings that the Hartford public school system suffers from severe and increasing racial and ethnic isolation, that such isolation is harmful to students of all races, and that the districting statute codified at § 10-240 is the single most important factor contributing to the concentration of racial and ethnic minorities in the Hartford public school system. The fact that, as pleaded, the plaintiffs' complaint does not provide them a constitutional remedy for one of their afflictions, namely, their poverty, is not a ground for depriving them of a remedy for the other.

The uncontested evidence of the severe racial and ethnic isolation of Hartford's schoolchildren demon-

strates that the state has failed to fulfill its affirmative constitutional obligation to provide all of the state's schoolchildren with a substantially equal educational opportunity. Much like the substantially unequal access to fiscal resources that we found constitutionally unacceptable in *Horton I*, the disparity in access to an unsegregated educational environment in this case arises out of state action and inaction that, prima facie, violates the plaintiffs' constitutional rights, although that segregation has occurred de facto rather than de jure. Thus, because the plaintiffs have made the requisite prima facie showing that their fundamental right to a substantially equal educational opportunity has been jeopardized, the burden of justification shifts to the state.

We next consider whether the defendants have met their burden of demonstrating that the disparities in the plaintiffs' educational opportunities are "incident to the advancement of a legitimate state policy." *Horton III*, supra, 195 Conn. 38. The defendants emphasize the uncontested fact that, although the state has created and maintained the public elementary and secondary school system, including the districting and the attendance statutes; General Statutes §§ 10-184 and 10-240; the state bears no de jure responsibility for the racial and ethnic isolation that the plaintiffs have encountered.

The statutes enacted by the legislature and the educational strategies adopted by the state demonstrate that the state has acted to further policies that are both legitimate and facially neutral with respect to racial and ethnic isolation. The General Assembly has enacted no legislation that was intended to cause either de jure or de facto segregation. It enacted the districting statute, not to impose or to foster racial or ethnic isolation, but to improve educational quality for all Connecticut schoolchildren by increasing state involvement in all aspects of public elementary and secondary education.





Moreover, the districting scheme presently furthers the legitimate nonracial interests of permitting considerable local control and accountability in educational matters. Furthermore, in recognition of its moral obligation to address the adverse consequences of racial and ethnic discrimination, the state reorganized the board of education, during the 1980s, to concentrate on the needs of urban schoolchildren and to promote diversity in the public schools. Under § 10-226a et seq., which the legislature enacted to remedy racial imbalances *within* public school districts, all schools within a district must maintain, within specified tolerances, a student population that reflects the student population in the district as a whole. In addition, the state has supported and encouraged voluntary plans for increasing interdistrict diversity. It has provided financial support to interdistrict magnet programs and has enacted legislation to promote *voluntary* interdistrict solutions to racial and ethnic isolation. See General Statutes § 10-264a et seq. In all these respects, the state has furthered agendas that are legitimate. Accordingly, the defendants have sustained their initial burden of justifying the legitimacy of the state's actions.

In light of the defendants' affirmative showing, we now consider the third part of the *Horton III* test. Once the state's justification for its official actions has been shown to be acceptable, "the state must further demonstrate that the continuing disparities are nevertheless not so great as to be unconstitutional." *Horton III*, supra, 195 Conn. 38. In the context of the present claims, the state must demonstrate that, in light of its recognized discretion in matters of public elementary and secondary education, and taking into account the measures that it has taken to remedy racial and ethnic disparities in the public schools, the disparities are not so significant as to rise to the level of a constitutional deprivation. In our assessment of whether the state has

met its burden, we again emphasize that, much like the substantially unequal fiscal resources that we found constitutionally unacceptable in *Horton I* and *Horton III*, the disparity in access to an unsegregated educational environment in this case arises out of discrimination that is de facto rather than de jure.

We conclude that the defendants have failed to satisfy their difficult burden. Despite the initiatives undertaken by the defendants to alleviate the severe racial and ethnic disparities among school districts, and despite the fact that the defendants did not intend to create or maintain these disparities, the disparities that continue to burden the education of the plaintiffs infringe upon their fundamental state constitutional right to a substantially equal educational opportunity.

Our conclusion finds uncontested factual support in the stipulations of the parties, which provide dramatic documentation of the wide disparities in the racial and ethnic composition of the student populations in the public schools in Hartford and those in the twenty-one surrounding communities. Although we have discussed these statistics previously in this opinion, they bear repeating. The percentage of minorities who attend Hartford public schools is significantly higher than the percentage of minorities who attend schools in the surrounding school districts. In the 1991–92 school year, over 92 percent of the students in the Hartford public school system were members of minority groups. In stark contrast, in that same period, only seven of the twenty-one surrounding suburban towns had a student minority enrollment above 10 percent. We rely also on the findings made by the trial court, which have not been contested by any of the parties, that despite efforts by the state to alleviate the severe racial and ethnic isolation that exists in the Hartford public school system, "[s]tudents in the Hartford schools are racially isolated *and are likely to become more isolated in the future*"[43] and that "*[t]he single most important factor that contribute[s] to the present concentration of racial and ethnic minorities in Hartford [is] the town-school district system* [codified at § 10-240] which has existed since 1909, when the legislature consolidated most of the school districts in the state so that thereafter town boundaries became the dividing lines between all school districts in the state." (Emphasis added.) This record compels the conclusion that the present state regulation of public elementary and secondary education "emasculate[s] the goal of substantial equality." (Internal quotation marks omitted.) *Horton III*, supra, 195 Conn. 38. We conclude, therefore, that the school districting scheme, as codified at §§ 10-184 and 10-240 and as enforced with regard to these plaintiffs, is unconstitutional.





It is crucial for a democratic society to provide all of its schoolchildren with fair access to an unsegregated education. As the United States Supreme Court has eloquently observed, a sound education "is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms." *Brown* v. *Board of Education*, supra, 347 U.S. 493. "The American people have always regarded education and [the] acquisition of knowledge as matters of supreme importance. . . . We have recognized the public schools as a most vital civic institution for the preservation of a demo-

[43] This finding has proven to be accurate. As we have noted previously, in the 1994–95 school year, the percentage of minority students enrolled in the Hartford public school system increased to nearly 95 percent.

cratic system of government . . . and as the primary vehicle for transmitting the values on which our society rests. . . . And these historic perceptions of the public schools as inculcating fundamental values necessary to the maintenance of a democratic political system have been confirmed by the observations of social scientists. . . . [E]ducation provides the basic tools by which individuals might lead economically productive lives to the benefit of us all. In sum, education has a fundamental role in maintaining the fabric of our society. We cannot ignore the significant social costs borne by our Nation when select groups are denied the means to absorb the values and skills upon which our social order rests." (Citations omitted; internal quotation marks omitted.) *Plyler* v. *Doe*, supra, 457 U.S. 221.

Although the constitutional basis for the plaintiffs' claims is the deprivation that they themselves are suffering, that deprivation potentially has an impact on "the entire state and its economy—not only on its social and cultural fabric, but on its material well-being, on its jobs, industry, and business. Economists and business leaders say that our state's economic well-being is dependent on more skilled workers, technically proficient workers, literate and well-educated citizens. And they point to the urban poor as an integral part of our future economic strength. . . . So it is not just that their future depends on the State, the state's future depends on them." *Abbott* v. *Burke*, 119 N.J. 287, 392, 575 A.2d 359 (1990). Finding a way to cross the racial and ethnic divide has never been more important than it is today.

## IV

## REMEDIES

Our decision to reverse the judgment of the trial court, and to direct that judgment be rendered on behalf of the plaintiffs on the merits of their constitutional



claims in the first and second counts of their complaint, requires us to consider what relief may properly be afforded to the plaintiffs. We recognize that the fashioning of appropriate declaratory or injunctive relief requires careful consideration in order to weigh the benefits and costs of various remedial measures.

In their appeal to this court, the plaintiffs have not focused their attention on the remedial consequences of a substantive decision in their behalf. Their prayer for relief asks us to reverse the judgment of the trial court and to remand the case with direction to render a declaratory judgment and "for further equitable relief not inconsistent with [our] decision." The defendants urge this court not to assume direct control of the educational system in Connecticut and to eschew "acting as a super-legislature and glorified [b]oard of [e]ducation."

Because the parties have not had the opportunity to present evidence directed to the remedial consequences that follow from our decision on the merits of the plaintiffs' complaint, we could remand this case to the trial court for further proceedings to address remedies. Alternatively, if no further evidentiary inquiries would be required, we could invite further briefing in this court and attempt to resolve the issues ourselves.

We have decided not to follow either of these avenues but to employ the methodology used in *Horton I*. In that case, the trial court, after having found for the plaintiffs, limited its judgment by granting only declaratory relief but retained jurisdiction to grant consequential relief, if needed, at some future time. *Horton I*, supra, 172 Conn. 650. In light of the complexities of developing a legislative program that would respond to the constitutional deprivation that the plaintiffs had established, we concluded, in *Horton I*, that further judicial intervention should be stayed "to afford the

General Assembly an opportunity to take appropriate legislative action." Id., 653. Prudence and sensitivity to the constitutional authority of coordinate branches of government counsel the same caution in this case.

In staying our hand, we do not wish to be misunderstood about the urgency of finding an appropriate remedy for the plight of Hartford's public schoolchildren. Every passing day denies these children their constitutional right to a substantially equal educational opportunity. Every passing day shortchanges these children in their ability to learn to contribute to their own well-being and to that of this state and nation. We direct the legislature and the executive branch to put the search for appropriate remedial measures at the top of their respective agendas. We are confident that with energy and good will, appropriate remedies can be found and implemented in time to make a difference before another generation of children suffers the consequences of a segregated public school education.

The defendants counsel us, however, to stay our hand entirely. They claim that no judicial mandate can properly take into account the daunting, if not intractable, difficulties of crafting a remedial solution to the problem of de facto racial and ethnic segregation in the public schools of Hartford. When a similar question was raised about judicial authority to mandate the reform of state electoral systems, the claim was given short shrift by the United States Supreme Court. The court stated, in *Reynolds* v. *Sims*, supra, 377 U.S. 566: "We are told that the matter of apportioning representation in a state legislature is a complex and many-faceted one. We are advised that States can rationally consider factors other than population in apportioning legislative representation. We are admonished not to restrict the power of the States to impose differing views as to political philosophy on their citizens. We are cautioned about the dangers of entering into political thickets and





mathematical quagmires. *Our answer is this: a denial of constitutionally protected rights demands judicial protection; our oath and our office require no less of us.*" (Emphasis added.) Our oath, our office and the constitutional rights of the schoolchildren of Hartford, require no less of us in this case.

The judgment is reversed and the case is remanded with direction to render a declaratory judgment for the plaintiffs; the Superior Court is directed to retain jurisdiction in accordance with this opinion.

In this opinion BERDON, NORCOTT and KATZ, Js., concurred.