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Hon. Tani Cantil-Sakauye, Chief Justice
Associate Justices of the California Supreme Court
California Supreme Court
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350 McAllister Street
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Re: California Supreme Court No. S234901
Campaign for Quality Education, et al. v. State of California, et al.
California Court of Appeals No. A134423
Alameda County Superior Court No. RG10524770
Maya Robles-Wong, et al. v. State of California, et al.,
California Teachers Association, Intervenor and Appellant
California Court of Appeals No. A134424
Alameda County Superior Court No. RG10515768

Dear Chief Justice Cantil-Sakauye and Associate Justices of the California Supreme Court:

This letter is written on behalf of the Youth Law Center in support of the Petition for Review filed by the Plaintiffs-Appellants and Intervenor-Appellant on May 31, 2016, in two cases that were consolidated for review on appeal, *Campaign for Quality Education v. State of California* and *Robles-Wong v. State of California*, with California Teachers Association as Intervenor and Appellant. The request for review of the 2-1 decision, reported at 246 Cal.App.4th 896, has been made pursuant to Rule 8.500(c) of the California Rules of Court, providing for review in cases involving important questions of law.

I. Statement of Interest

Youth Law Center (YLC) is a California-based, national nonprofit public interest law firm that advocates for children in the child welfare and juvenile justice systems. Through impact litigation, policy advocacy, technical assistance, and public education, the Center works to protect and advance the rights of these especially vulnerable children, safeguard their

well-being, and ensure that they have the care, conditions, services, and supports they need to grow into healthy, productive adults. YLC attorneys have represented children in civil rights litigation and other advocacy in California and more than two dozen other states. The Center has previously participated as *amicus curiae* in cases before the California Supreme Court.

Access to education for children in the child welfare and juvenile justice systems has been central to Youth Law Center's mission since its founding in 1978. YLC attorneys have successfully challenged the inadequacy of education in a Bureau of Indian Affairs operated Indian boarding school (*Ramon v. Soto*, No. 81-367 (D. Ariz. filed Apr. 2, 1981)), the provision of special education and related services to youth at the California Youth Authority (*Nick O. v. Terhune*, No. 89-0755 (E.D. Cal. filed May 25, 1989)), the failure of a state prison system to provide special education and related services to disabled inmates (*Melvin C. v. Schilling*, No. L 91-497 (D. Md. filed Feb. 22, 1991)), and inadequate education in a state juvenile correctional system (*S.H. v. Taft*, No. 2:04-cv-01206 (S.D. Ohio filed Dec. 20, 2004)). Public officials, legislators, advocates, and other system stakeholders across the nation often consult with YLC staff on juvenile law and policy issues and rely on the Center's research, training, and technical assistance on an array of issues. YLC has been involved in the development of national and statewide facility standards including education-related standards for detained youth. YLC staff attorneys led the development of the 2006 national Juvenile Detention Alternatives Initiative's *Facility Assessment Standards* and the 2014 revision and update. For many years, YLC also participated in California's corrections oversight agency's education workgroup to develop standards for local juvenile halls, camps, and ranches. The Center has long been involved in public policy discussions, legislation, and other advocacy regarding the education of children in California's juvenile court system, from supporting the establishment and implementation of comprehensive education-related protections for foster youth to sponsoring legislation to prevent discriminatory exclusions from school enrollment of court-involved youth. Additionally, YLC education publications have included a first-of-its-kind practice guide entitled *California Juvenile Court Special Education Manual* (1994), *Getting Out of the Red Zone* (2003), and the recently released *Educational Injustice: Barriers to Achievement and Higher Education for Youth in California Juvenile Court Schools* (2016).

Youth Law Center is interested in this case because the core question it presents – whether the fundamental right to education under the California Constitution encompasses a right to an education that meets some minimum qualitative standard – is one of special import for system-involved children who

face serious barriers to accessing even the most basic educational programming and disproportionately suffer poor outcomes in education and beyond.

II. Support for Review

As the Complaint and the Petition for Review describe, public schools in California have long been dramatically under-resourced and for too long have under-performed. As a consequence, overall student outcomes have sadly, but not surprisingly, been dismal, both in relation to the achievement standards set by the state and in comparison to educational outcomes in other states. Against this backdrop, the question of whether California's public school students are due a minimum qualitative standard of education is fundamental to the state's future. *See, e.g., Serrano v. Priest*, 5 Cal.3d 584, 605-10 (1971) (recognizing societal importance and impact of education); *Brown v. Board of Educ.*, 347 U.S. 483, 493 (1954) (same). For those in the child welfare and juvenile justice systems, the importance of the question is magnified. These children are in the care of and dependent upon the state in unparalleled ways. The state has a unique and special obligation to ensure quality education for children in its care. If they are not due a minimally adequate or competent education, or if they do have a right to an education with some basic quality and one is not provided due to inadequate funding, these students are extremely unlikely to have the gaps filled by their families and other resources and supports outside of the classroom.

A. Children in the Foster Care and Juvenile Justice Systems Suffer from Disproportionately Poor Educational Resources and Outcomes.

To start, the children in these two systems tend to face added challenges to educational access and they disproportionately have special needs. For example, students in foster care in California are classified as having a disability and qualifying for special education services at a significantly higher rate (18%) than their counterparts with low socioeconomic status (8%) and the state's general student population (7%). *See* Vanessa X. Barrat & BethAnn Berliner, The Center for the Future of Teaching and Learning at WestEd, *The Invisible Achievement Gap: Education Outcomes of Students in Foster Care in California's Public Schools (Part I)* 10-11 (2013) (hereinafter *The Invisible Achievement Gap*).¹

¹ Other research indicates that foster children who are in special education tend to be placed in more restrictive educational settings and have poorer quality education plans than their special education peers who are not in foster care, and one study showed that 84% of foster children with screenings indicating potential need for special education services did not receive related services within nine to twelve months. *See* National

Students in foster care are also more likely than the general population of students to attend the state's lowest performing schools and less likely to attend its highest performing schools. For example, roughly 15% attend the lowest-performing 10% of schools while 2% attend the highest-performing 10% of schools, and about two thirds attend schools in the lower half of the ranks. *See id.* at iii, 20.

The picture is even starker for those in the juvenile justice system. Nationally, between 30% and 50% of incarcerated youth have been identified as qualifying for special education services. *See* Lois M. Davis et al., RAND Corp., *How Effective Is Correctional Education, and Where Do We Go from Here?: The Results of a Comprehensive Evaluation* 22 (2014). Among those attending a juvenile court school in California during one recent school year, over 87% were from low socioeconomic backgrounds, according to data maintained by the state's Department of Education.² *See* Youth Law Center, *Educational Injustice: Barriers to Achievement and Higher Education for Youth in California Juvenile Court Schools* 3 (2016) (hereinafter *Educational Injustice*) (citation omitted). Typically, these students enter juvenile court schools from other underperforming schools. *See id.* Two in five (40.7%) come from homes where English is not the primary language, and 27.5% are classified as English Learners (compared to 22.7% of statewide enrollment). *See id.* at 15-16.

In both systems, students are disproportionately children of color. This is especially so in the juvenile justice system where more than 85% of California's juvenile court school students are youth of color. *See id.* at 14. Thus, harm experienced disproportionately by system-involved students is harm that is experienced first and foremost by children of color.

The educational outcomes for system-involved students are, like the resources they are afforded, disproportionately poor. Nationally, only 50% of foster youth complete high school by the age of 18, and while 84% of 17- and 18-year-old foster youth want to go to college, only 20% attend, and only two to nine percent (2%-9%) of former foster youth attain a bachelor's degree. *See* National Working Group on Foster Care and Education, *Fostering Success in Education: National Factsheet on the Educational Outcomes of Children in Foster Care* 1

Working Group on Foster Care and Education, *Fostering Success in Education: National Factsheet on the Educational Outcomes of Children in Foster Care* 5 (Jan. 2014) (citing studies).

² Juvenile court schools are operated by County Offices of Education to serve students who are detained in county juvenile halls or other local juvenile justice placements such as camps and ranches.

(Jan. 2014) (hereinafter *Fostering Success*). In California specifically, in both English language arts and mathematics, students in foster care have fallen into the two lowest performance levels – below basic and far below basic – at twice the rate of the statewide population. See *The Invisible Achievement Gap, supra*, at 28, 31. Only 29% of foster students tested at the level of proficient or above in English language arts, compared to 40% of students with low socio-economic status and the overall proficiency rate of 53%. See *id.* at 28. Foster care students had the lowest proficiency rate in mathematics – 37%, a rate significantly below the rates for students with low socio-economic status (50%) and the overall student population (60%). See *id.* at 31.

As one might expect, these statistics portend low graduation rates for students in foster care. The 2009-10 statewide graduation rate for grade-12 students was 84%; for those in foster care it was only 58% – lower than that for students with low socioeconomic status, those with disabilities, and English learners. See *id.* at 40-41.³

Educational outcomes are still worse for children in schools in the juvenile justice system. These students have the highest level of need and receive some of the least effective education. See Southern Education Foundation, *Just Learning: The Imperative to Transform Juvenile Justice Systems Into Effective Educational Systems (Special Summary)* 4 (2014) (hereinafter *Just Learning*). One large study found that, in 2009, “longer term” students (those enrolled for 90 days or more and whose progress was documented) failed to make any significant improvement in learning and academic achievement. See *id.* Less than half (47%) earned high school course credits, only 25% enrolled in their local school district, less than a tenth (9%) earned a GED or high school diploma, and a mere 2% enrolled in post-secondary education. See *id.* In California, the results are similarly dim. Data reported by juvenile court schools regarding their long-term students shows that less than 60% have made gains in reading (57.7%) and math (59%) proficiency; slightly more than 10% and 12%, respectively, have made no improvements in reading and math; and many have actually lost ground, with over 29% showing a

³ Foster youth frequently experience school changes, which affect academic progress and can cause students to fall behind. See *Fostering Success, supra*, at 3. In addition to suffering from relatively low graduation rates, youth in foster care who do complete high school tend to do so later than expected. On average, these youth experience high levels of grade retention and are therefore more likely to be older for their grade and to be “under-credited,” both of which are factors that are strong predictors of dropping out. See *id.* at 5.

loss of reading ability and 27.7% exhibiting diminished math skills. *See Educational Injustice, supra*, at 14-15.

Juvenile court schools also have the distinction of having the highest drop-out rate in the state – for 2013-14, when the statewide adjusted dropout rate was 11.6%, juvenile court schools had a 37.7% drop-out rate. *See id.* at 12. Ten counties had court school drop-out rates of 60% or higher that year. *See id.* Just 1.1% of California court school students were accepted to or enrolled in post-secondary education, and a mere 0.01% obtained employment within 30 days of leaving a juvenile justice system facility. *See id.* at 19 (citing California Department of Education, *Report to the Governor, Legislator, and Legislative Analyst's Office: Identification and Status of State Monitoring of County Court Schools and State Division of Juvenile Justice Schools* Attach. 2 (Dec. 2012)).

B. Quality Educational Services and Resources Make a Critical Difference for Children in the Foster Care and Juvenile Justices Systems, and the Benefits of Their Educational Advancement Redound to all Californians.

None of these results are a foregone conclusion. While it is true that students in foster care and those in the juvenile justice system disproportionately experience challenges that impact learning, *they can learn*. The quality of the educational opportunities they are afforded – and, relatedly, the resources and supports available to support their academic progress – make a critical difference. For example, a randomized study of foster youth with disabilities found that 72% of the participants in one model program graduated from high school or obtained a GED a year after the program, compared to only 50% of their peers in a control group. *See Fostering Success, supra*, at 5. Numerous other promising programs have been shown to boost educational outcomes for foster youth, from preschool to college. *See generally Fostering Success, supra*. High-quality programs in the juvenile justice system have similarly shown results. *See, e.g.,* James Forman Jr. & David Domenici, *What it Takes to Transform a School: Inside a Juvenile Justice Facility*, in *Justice for Kids: Keeping Kids Out of the Juvenile Justice System* 283 (Nancy Dowd ed. 2011); Kimber W. Malmgren & Peter E. Leone, *Effects of a Short-Term Auxiliary Reading Program on the Reading Skills of Incarcerated Youth*, 23 *Educ. & Treatment of Children* 239 (Aug. 2000). In the absence of a right to some basic level of educational quality, however, there is little assurance that our most vulnerable and challenged students will realize their full potential.

Imagine the difference for the children who are uniquely entrusted to us if the fundamental right to education is recognized as encompassing a public school education that meets some minimum qualitative standard. Children in the care of

the state generally do not have the safety net of family resources, connections, and supports that can fill the gaps left by inadequate public schooling. For them, the learning that takes place in the classroom – or that does not take place – is far more likely to be determinative of life paths. The questions presented by the Petition are thus especially critical for system-involved students.

As the Constitution’s drafter recognized, education is key to the future productivity of individual students and the larger democracy. *See* Ann D. Gordon, *California Constitutional Law: The Right to an Adequate Education*, 67 Hastings L.J. 323, 328-36 (2016) (discussing history of education clauses of California Constitution). This Court also has long recognized the indispensable role of education for each child’s development and society as a whole. *See, e.g., Serrano v. Priest*, 5 Cal.3d 584, 605 (1971); *San Francisco Unified School Dist. v. Johnson*, 3 Cal.3d 937, 950 (1971); *Jackson v. Pasadena City School Dist.*, 59 Cal.2d 876, 880 (1963); *Piper v. Big Pine School Dist.*, 193 Cal. 664, 673 (1924); *Ward v. Flood*, 48 Cal. 36 (1874). When children receive an inadequate education and have correspondingly poor educational outcomes, the impact can be lifelong. On average, high school graduates earn \$8,500 more per year than those who do not graduate. *See Fostering Education, supra*, at 5 (citation omitted). Higher education has an even greater effect on income. With a four-year degree, a foster youth can expect to earn approximately \$481,000 more over the course of her work-life than if she had only a high school diploma. *See id.* at 6 (citation omitted). This kind of income potential makes a crucial difference to the ability to support a family and allow one’s children to have even greater opportunities. For youth in the juvenile justice system, a quality educational program can similarly offer a turning point with life-long impact. Youth who have above-average academic achievement while incarcerated are more likely to return to school, have a significantly lower likelihood of arrest, and are more likely to earn a decent living. *See, e.g.,* Steve Suitts et al., Southern Education Foundation, *Just Learning: The Imperative to Transform Juvenile Justice Systems into Effective Educational Systems* 27 (2014) (discussing research, including 2008 study of young males in the California juvenile justice system, evidencing positive impacts of academic progress in juvenile justice schools); Thomas G. Blomberg et al., *Is Educational Achievement a Turning Point for Incarcerated Delinquents Across Race and Sex?*, 41 J. of Youth & Adolescence 202 (Feb. 2012); Thomas G. Blomberg, *Incarceration, education and transition from delinquency*, 39 J. of Crim. Just. 355 (July-Aug. 2011). One study estimated a 10-year state and community cost of two to three million dollars for every young person who leaves the juvenile justice system without having had the effective educational experience he needed. *See Just Learning, supra*, at 7.

There can be no real dispute that the questions presented in the Petition are of great importance to the general public and especially to the least served children in California's public schools. It is worth asking if the fundamental right to education has content and meaning beyond the right of access to the schoolhouse door. By statute, every non-exempt child between the ages of six and 18 is subject to compulsory full-time education. Educ. Code § 48200. Does the Constitution in any way require that they actually be taught? Questions of this magnitude warrant the examination of this Court. We therefore urge the Court to grant the Petition.

Thank you for your consideration.

Respectfully,



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PROOF OF SERVICE

Case Name: *Campaign for Quality Education, et al. v. State of California,,et al.*
Maya Robles-Wong v. State of California, et al.

Case No: CA Supreme Court No: S 234901
CA Court of Appeal Nos. A134423, A134424
Alameda County Superior Court Nos. RG10524770; RG
10515768

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to this action. My business address is 200 Pine Street, Suite 300, San Francisco, California 94104.

On the date indicated below I sent the attached document:

Letter of Amicus Curaie in Support of Petition for Review

to the parties hereinafter listed by placing a true and correct copy of such document in an envelope and placing such envelope in a United States Post Office box, postage prepaid:

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Additionally, on the date below I served the above document by submitting it electronically through the Court's True Filing system on:

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I, Robin Bishop, declare under penalty of perjury that the foregoing is true and correct. Served and executed on this 30th day of June 2016.

