

UNITED STATES COURT OF APPEALS
FOR THE
FIRST CIRCUIT

SAMANTHA COMFORT, et al.,
Plaintiffs-Appellants,

v.

LYNN SCHOOL COMMITTEE, et al.,
Defendants-Appellees.

ON APPEAL FROM A JUDGMENT OF
THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

**BRIEF OF THE CIVIL RIGHTS PROJECT AT HARVARD UNIVERSITY
AS AMICUS CURIAE IN SUPPORT OF DEFENDANTS-APPELLEES
AND AFFIRMANCE OF THE JUDGMENT OF THE DISTRICT COURT**

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**DISCLOSURE OF CORPORATE AFFILIATION
AND FINANCIAL INTEREST**

Pursuant to Federal Rule of Appellate Procedure 26.1, The Civil Rights Project at Harvard University makes the following disclosure:

1. The Civil Rights Project at Harvard University is affiliated with Harvard University and the President and Fellows of Harvard College, which is organized as a nonprofit corporation.
2. Neither The Civil Rights Project at Harvard University nor the President and Fellows of Harvard College has a substantial financial interest in the outcome of this litigation.

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**SOURCE OF AUTHORITY FOR FILING, IDENTITY, AND INTEREST
OF AMICUS CURIAE**

Pursuant to Federal Rule of Appellate Procedure 29(a) and based upon motion for leave of court, The Civil Rights Project at Harvard University submits this amicus curiae brief in support of Defendants-Appellees and affirmance of the judgment of the District Court below.

Founded in 1996, The Civil Rights Project is a nonprofit organization based at Harvard University whose mission is to advance research and advocacy in pursuit of racial justice. The Civil Rights Project devotes significant attention to educational issues, including the consequences of racial and ethnic diversity in higher education, the problem of minority dropouts, the effects of high stakes testing on minority children, K-12 school reform proposals, racial disparities related to special education and school discipline, the rights of English language learners, and the problems of segregation and resegregation in the public schools.

A central focus of The Civil Rights Project's research has been the development of scholarship that provides insights into the impact of racial diversity in education. Since its founding, The Civil Rights Project has commissioned or produced dozens of studies on a range of topics, including the effects of diversity in education in both K-12 education and higher education. As a result of these studies and numerous conferences and roundtables, several

volumes focusing on legal and social science findings involving diversity and education have been published, including *Diversity Challenged: Evidence on the Impact of Affirmative Action*, which was cited approvingly by the United States Supreme Court in its opinion in *Grutter v. Bollinger*, 123 S. Ct. 2325 (2003), affirming the legality of race-conscious admissions policies in higher education.

The federal courts have often employed relevant research studies in equal protection decisions involving race, and the Court's analysis in the instant case can and should be informed by credible and reliable research findings. The Civil Rights Project has a deep-seated interest in the accurate presentation of relevant research findings addressing the benefits of racial diversity and the harms of racial isolation. Although an extensive body of desegregation research has been developed during the past forty years, much of the research, particularly on the educational benefits of diversity for *all* students, has been generated only recently. Accordingly, this brief provides highlights and citations to relevant research findings to help clarify the Court's review of the literature.

Because of its core mission and its research and advocacy work in defense of civil rights, specifically in the area of racial diversity in education, The Civil Rights Project has a strong interest in the outcome of this case. However, The Civil Rights Project does not, in this brief or otherwise, represent the official views of Harvard University.

SUMMARY OF ARGUMENT

The district court below correctly upheld the constitutionality of the Lynn School Committee's Voluntary Plan for School Improvement and the Elimination of Racial Isolation. In particular, the district court's conclusion that promoting racial diversity and reducing racial isolation in the Lynn schools are compelling governmental interests is well supported by both the expert testimony introduced at trial and numerous research studies documenting the benefits of racially diverse student bodies and the harms of racially segregated learning environments. Among the many benefits that accrue from student body diversity are increased academic achievement, greater educational and occupational aspirations, more cross-racial understanding, a stronger sense of civic engagement, and an increased desire to live and work in settings with members of multiple racial groups. Among the harms associated with racial isolation and segregated learning environments are adverse effects on school attendance and performance, stereotyping and racial hostility, decreased opportunities to learn from members of other racial groups, and poorer preparation to address interracial contexts as adults. Research studies also support the district court's conclusion that the Lynn Plan is narrowly tailored because of the necessity of employing race-conscious policies in attaining student bodies that can promote the benefits of racial diversity and prevent the harms of racial isolation.

ARGUMENT

I. PROMOTING RACIAL DIVERSITY IN ELEMENTARY AND SECONDARY EDUCATION IS A COMPELLING GOVERNMENTAL INTEREST.

In recently upholding the University of Michigan's compelling interest in promoting student body diversity, the United States Supreme Court recognized the substantial educational benefits that accrue from diverse student bodies in higher education. *Grutter v. Bollinger*, 123 S. Ct. 2325, 2339-41 (2003). The Court acknowledged that student diversity "promotes 'cross-racial understanding,' helps to break down racial stereotypes, and 'enables [students] to better understand persons of different races.'" *Id.* at 2339-40. The Court further recognized that "numerous studies show that student body diversity promotes learning outcomes, and 'better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals.'" *Id.* at 2340. Moreover, the Court concluded that "[t]hese benefits are not theoretical but real, as major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints." *Id.*

The benefits of student body diversity in elementary and secondary education are also well documented and strongly support the district court's holding that the Lynn School Committee's promotion of racial diversity is a

compelling governmental interest. Both expert testimony introduced at trial and numerous research studies conducted in school districts throughout the country demonstrate the educational benefits of desegregated and racially diverse student bodies. Among these benefits are increased academic achievement for minority students, greater educational and job-related aspirations among students, increased cross-racial understanding and higher comfort levels with members of racial groups other than one's own, a stronger sense of civic engagement, and an increased desire to live and work in settings with members of multiple racial groups. Promoting racial diversity in K-12 education should thus be no less compelling than the interest in promoting educational diversity in higher education, for the Supreme Court has "repeatedly acknowledged the overriding importance of preparing students for work and citizenship, describing education as pivotal to 'sustaining our political and cultural heritage' with a fundamental role in maintaining the fabric of society." *Grutter*, 123 S. Ct. at 2340.

A. Expert Testimony and Evidence Introduced in the Court Below Demonstrate the Benefits of Racial Diversity.

In upholding the constitutionality of the Defendant-Appellee Lynn School Committee's Voluntary Plan for School Improvement and the Elimination of Racial Isolation ("Lynn Plan"), the district court below correctly relied on expert testimony demonstrating the benefits of racial diversity in the Lynn schools. The

district court cited the testimony of Dr. Gary Orfield, a Professor of Education and Social Policy at Harvard University and Co-Director of The Civil Rights Project at Harvard University, who examined data from an extensive survey of eleventh grade students from all three of Lynn's high schools and concluded that the Lynn school district is

a school district where all groups of students have experienced ability to work together, to share issues, to discuss across racial and ethnic lines, feel comfort – feel that they are prepared to live and work in interracial communities, feel prepared to work under the supervision of somebody of another racial group, have worked on projects across racial lines in their classes, [and] feel comfortable in discussing issues across racial lines.

Comfort v. Lynn Sch. Comm., 283 F. Supp. 2d 328, 354-55 (D. Mass. 2003) (citing The Civil Rights Project at Harvard University, *The Impact Of Racial and Ethnic Diversity on Educational Outcomes: Lynn, MA School District* (2002), available at <http://www.civilrightsproject.harvard.edu/research/diversity/LynnReport.pdf>). These conclusions are consistent with the conclusions of researchers who have employed the same survey instrument (a detailed questionnaire with over seventy questions) in other major school districts and have found similarly positive educational effects arising in racially diverse schools. See Michal Kurlaender & John T. Yun, *Is Diversity a Compelling Educational Interest?: Evidence from Louisville*, in *Diversity Challenged: Evidence on the Impact of Affirmative Action* 111 (Gary Orfield

with Michal Kurlaender eds. 2001) [hereinafter Kurlaender & Yun, *Louisville Survey*]; Michal Kurlaender & John T. Yun, *The Impact of Racial and Ethnic Diversity on Educational Outcomes: Cambridge, MA School District*, available at http://www.civilrightsproject.harvard.edu/research/diversity/cambridge_diversity.php#fullreport [hereinafter Kurlaender & Yun, *Cambridge Survey*].

The district court also correctly relied on Dr. Orfield's testimony indicating that "if schools implement desegregation programs with supportive elements, such as training of teachers, and the schools are committed to creating a positive supportive atmosphere, all students obtain 'benefits to the way of thinking, understanding of the society, [and] ability to function in society,' as well as gains in academic achievement across the board." *Comfort*, 283 F. Supp. 2d at 355. As the district court made clear, these benefits "accrue to *all* children, not just minority children, as a result of school integration" and "side-by-side learning with students of other races confers substantial citizenship benefits on all students." *Id.* (emphasis in original).

Moreover, the district court's conclusions are bolstered by the expert testimony of two nationally prominent psychologists: Dr. John Francis Dovidio, the Charles A. Dana Professor of Psychology and Dean of Faculty and Provost at Colgate University, and Dr. Melanie Killen, a Professor of Human Development in the College of Education at the University of Maryland and Associate Director

for the Center for Children, Relationships and Culture. Both Dr. Dovidio, a social psychologist with expertise in theories of intergroup relations, and Dr. Killen, a developmental and educational psychologist, based their testimony on empirical observations and interviews of students, teachers, and administrators in Lynn, as well as on prominent psychological studies and theories, and concluded that the Lynn Plan effectively leads to positive intergroup relations, the breaking down of racial stereotypes and tensions, and the promotion of racial harmony. *Id.* at 356-58.

As the district court noted, “intergroup contact theory” is a prominent and widely accepted psychological theory which posits that interaction between students of different races promotes empathy, understanding, positive racial attitudes, and the disarming of stereotypes. *Id.* at 356. *See generally* Gordon W. Allport, *The Nature of Prejudice* (1954); Christopher Ellison & Daniel A. Powers, *The Contact Hypothesis and Racial Attitudes Among Black Americans*, 75 *Soc. Sci. Q.* 385 (1994) ; Lee Sigelman & Susan Welch, *The Contact Hypothesis Revisited: Black-White Interaction and Positive Racial Attitudes*, 71 *Soc. Forces* 781 (1993). “The four necessary conditions [for meaningful intergroup contact] are (1) equal status between or among different racial groups; (2) authority support for interactions between members of the groups (that is, teachers and staff who advocate and facilitate the contact); (3) common goals and

cooperative activities; and (4) opportunities for personalized contact to disrupt stereotypes.” *Comfort*, 283 F. Supp. 2d at 356-57.

Dr. Dovidio and Dr. Killen independently reached the conclusion that the Lynn schools had attained all four of these necessary conditions and that the positive racial climate in Lynn could be attributed directly to intergroup contact arising from racially diverse student bodies. Indeed, both experts expressed surprise at the ideal conditions in the Lynn schools for promoting intergroup contact and learning racial tolerance. Dr. Killen in particular found that this was true of all the schools she visited in Lynn: “racial environments were ‘uniformly positive,’ and she noted that ‘it wasn't the case that one school really stood out as being . . . seriously troubled, tough, problematic.’” *Id.* at 357. Moreover, Dr. Dovidio and Dr. Killen stressed that racial balance would be essential to obtain the benefits of intergroup contact that each of them had observed in the Lynn schools. As the district court’s opinion emphasized, “unless there is a ‘critical mass’ of white and nonwhite students in a given school, the efforts of schools to promote racial harmony lose much of their force.” *Id.*

B. Research Studies Show that Racial Diversity in K-12 Education Produces Educational and Social Benefits for Students.

In addition to the expert testimony and empirical evidence introduced at trial by Defendants-Appellees, an extensive body of research addressing the

educational and social benefits of desegregation and racially integrated schools supports the district court's conclusion that promoting racial diversity in elementary and secondary education is a compelling governmental interest.

1. Racial Diversity Can Increase the Academic Achievement of Minority Students.

Educational research on school desegregation has long demonstrated that minority students who attend more racially integrated schools show increased academic achievement and progress, which are typically measured by scores on achievement tests. *See, e.g.,* Janet Ward Schofield, *Maximizing the Benefits of Student Diversity: Lessons from School Desegregation Research*, in *Diversity Challenged: Evidence on the Impact of Affirmative Action 99* (Gary Orfield with Michal Kurlaender eds. 2001) [hereinafter Schofield, *Maximizing the Benefits of Student Diversity*]; Janet Ward Schofield, *Review of Research on School Desegregation's Impact on Elementary and Secondary School Students*, in *Handbook of Research on Multicultural Education 597* (James A. Banks & Cherry A. McGee Banks eds. 1995) [hereinafter Schofield, *Review of Research*]; Robert L. Crain & Rita E. Mahard, *The Effect of Research Methodology on Desegregation Achievement Studies: A Meta-Analysis*, 88 *Am. J. Soc.* 839 (1983); Robert L. Crain, *School Integration and the Academic Achievement of Negroes*, 44 *Soc. Educ.* 1 (1971).

In a 1983 review of over ninety research studies – including over 300 samples – examining the effects of school desegregation on black student achievement, Crain and Mahard found consistent results involving enhanced black achievement, with some variation in the extent and magnitude of these effects across districts, schools, grade level, and desegregation strategy. Crain & Mahard, *supra*. Their analyses further found agreement in the literature on achievement benefits at the lower grade levels, suggesting that the age at which black students enter desegregated schools is critically important; studies that have included students in desegregated schools from the primary grades have provided consistent findings of achievement gains for black students.

Similarly, Schofield's more recent review of the desegregation literature, published in 1995, examined several studies on the impact of desegregation on Latino students and found that average achievement levels for Latinos are higher in desegregated schools versus segregated schools. Schofield, *Review of Research, supra*. Further, more recent economic analyses of black students' test score data have confirmed positive effects on student achievement arising from a school's more diverse racial composition. Eric A. Hanushek, John F. Kain & Steven G. Rivkin, *New Evidence about Brown v. Board of Education: The Complex Effects of School Racial Composition on Achievement* (2002), available at <http://www.nber.org/papers/w8741> (analyzing Texas test score data and

finding that higher achieving black students benefit from a more diverse racial composition).

2. Racial Diversity Can Have Positive Effects on the Educational and Occupational Attainment of Minority Students.

Another body of research shows that racially diverse learning environments have positive effects on minority students' educational attainment and their occupational aspirations and careers. Segregated schools that are predominantly non-white often transmit lower expectations to minority students and offer a narrower range of educational and job-related options. See Marvin P. Dawkins & Jomills H. Braddock, *The Continuing Significance of Desegregation: School Racial Composition and African American Inclusion in American Society*, 63 J. Negro Educ. 394 (1994); Schofield, *Review of Research*, *supra*.

Consequently, minority students who attend desegregated schools can be exposed to higher educational expectations and career options often associated with more substantial enrollments of white students.

Studies on the educational attainment of black students have found that blacks who attended desegregated schools had a higher college attendance rate than black students who attended segregated schools, with stronger effects for black students from the North. See Robert L. Crain & Rita E. Mahard, *School Racial Composition and Black College Attendance and Achievement Test*

Performance, 51 Soc. Educ. 81 (1978). Recent analyses show that desegregated schooling has a positive effect on the number of years of school completed and on the probability of attending college. See Michael A. Boozer, et al., *Race and School Quality Since Brown v. Board of Education*, 1992 Brookings Papers Econ. Activity (Microeconomics) 269. And one study examining the influence of school peers through a nationally representative sample found that both black and white students who had cross-racial friendships had higher educational aspirations than students with only same-race friendships. Maureen T. Hallinan & Richard A. Williams, *Students' Characteristics and the Peer Influence Process*, 63 Soc. Educ. 122 (1990).

Reviews of the literature examining the relationship between racially diverse schools and *occupational* attainment reveal a number of positive effects. As one researcher has summarized, among the positive consequences for black students are: “(a) fostering higher occupational aspirations and more consistent career planning linked to these aspirations, (b) increasing earnings modestly, and (c) increasing the likelihood that they will work in professions in which blacks have traditionally been underrepresented.” Schofield, *Maximizing the Benefits of Student Diversity*, *supra*, at 100; see also Dawkins & Braddock, *supra* (reviewing studies on the relationship between desegregation and occupational attainment, including several studies relying on longitudinal data sets measuring

high school, family, individual, and workplace characteristics)

For example, a 1970 study of black males found that graduates of desegregated high schools held higher status jobs and earned higher incomes than their counterparts from segregated schools. Robert Crain, *School Integration and Occupational Achievement of Negroes*, 75 Am. J. Soc. 593 (1970). A 1983 study focusing on 1972 high school graduates similarly revealed that school desegregation positively influenced black males' occupational aspirations. Marvin P. Dawkins, *Black Student's Occupational Expectations: A National Study of the Impact of School Desegregation*, 18 Urb. Educ. 98 (1983). More recently, a 1992 study found that black students who attended racially isolated schools obtained jobs that were both lower paying and more racially isolated than the jobs obtained by whites. Boozer, et al., *supra*.

3. Racial Diversity Can Have Positive Effects on Minority Students' Social Interaction and Post-Educational Experiences

A related body of literature indicates that exposure to desegregation and racial diversity in elementary and secondary education can lead to more racially integrated experiences as adults. See, e.g., Jomills H. Braddock, *The Perpetuation of Segregation Across Levels of Education: A Behavioral Assessment of the Contact-Hypothesis*, 53 Soc. Educ. 178 (1980); James M. McPartland & Jomills H. Braddock, *Going to College and Getting a Good Job:*

The Impact of Desegregation, in Effective School Desegregation (William D. Hawley ed. 1981). A recent review of twenty-one studies examining “perpetuation theory” – a theory proposing that racial segregation tends to repeat itself across an individual’s life experiences and across institutions – found that desegregated experiences for black students typically lead to increased interaction with members of other racial groups in subsequent years. Amy Stuart Wells & Robert L. Crain, *Perpetuation Theory and the Long-Term Effects of School Desegregation*, 64 Rev. Ed. Res. 531 (1994). Results from the studies suggested that school desegregation had positive effects on both black and white students: students who attended desegregated schools were more likely to function in desegregated settings, such as colleges and universities, workplaces, and neighborhoods later in life. In essence, the findings suggest that desegregation has the effect of “break[ing] the cycle of segregation and allow[ing] nonwhite students access to high-status institutions and the powerful social networks within them.” *Id.* at 531. Therefore, “interracial contact in elementary or secondary school can help blacks overcome perpetual segregation.” *Id.* at 552.

C. Research Studies Show that Racial Diversity in K-12 Education Leads to Intergroup Contacts which Promote Cross-Racial Understanding and which Challenge Stereotypes Among All Students.

In addition to studies focusing on the benefits of desegregation and racial diversity for minority students, research studies addressing the benefits of racial diversity for *all* students have shown that increased intergroup contacts can promote greater cross-racial understanding and friendships and can undermine racial stereotypes. As one recently published study on the effects of desegregated schools makes clear: “[D]esegregation made the vast majority of the students who attended these schools less racially prejudiced and more comfortable around people of different backgrounds.” Amy Stuart Wells, et al., *How Desegregation Changed Us: The Effects of Racially Mixed Schools on Students and Society* (Apr. 2004), available at <http://www.tc.columbia.edu/newsbureau/features/ASWells032904.pdf>.

The same study, which based its conclusions on data drawn from over 500 interviews of 1980 high school graduates, educators, advocates, and policy makers who were involved in racially diverse public high schools nearly twenty-five years ago, found that “the vast majority of graduates across racial and ethnic lines greatly valued the daily cross-racial interaction in their high schools. They found it to be one of the most meaningful experiences of their lives, the best –

and sometimes the only – opportunity to meet and interact regularly with people of different backgrounds.” *Id.* at 6.

Recent surveys on the attitudes of current high school students toward their peers who are members of other racial groups indicate that students of all racial and ethnic groups who attend more diverse schools have higher comfort levels with members of racial groups other than their own, have an increased sense of civic engagement, and have a greater desire to live and work in multiracial settings. *See* Kurlaender & Yun, *Louisville Survey, supra*; Kurlaender & Yun, *Cambridge Survey, supra*.

For example, in a survey of students in the Jefferson County School District in Louisville, Kentucky, which is one of the nation’s most racially integrated school districts because of court-ordered desegregation, 85 percent of students reported that they were prepared to work in a diverse job setting and would be prepared to do so in the future, while over 80 percent of black students and white students reported that their school experience had helped them to work more effectively with and get along with members of other races and ethnic groups. Kurlaender & Yun, *Louisville Survey, supra*, at 130. Over 90 percent of high school students surveyed in Cambridge, Massachusetts, a demographically diverse city with a single public high school, reported that they were prepared to live and work among people of diverse racial and ethnic backgrounds, while 84

percent of both black students and white students said their school experiences had helped them better understand members of different racial and ethnic groups. Kurlaender & Yun, Cambridge Survey, *supra*, at 6-8.

The specific survey of the Lynn high schools conducted by The Civil Rights Project at Harvard University, which employed the same instrument as the surveys of Louisville and Cambridge, was administered to all juniors at all three Lynn high schools in the Spring of 2000 (with a high response rate of 78 percent) and yielded similar findings. The Civil Rights Project at Harvard University, *The Impact Of Racial and Ethnic Diversity on Educational Outcomes: Lynn, MA School District* (2002), available at <http://www.civilrightsproject.harvard.edu/research/diversity/LynnReport.pdf>. Researchers found that a majority of students reported a strong level of comfort with members of racial and ethnic groups different than their own and that students across the board also reported high levels of educational aspirations. Moreover, there was strong evidence that perceived opportunities to meet these aspirations cut across all racial and ethnic groups. *Id.* at 3. More specifically, 76 percent of all students believed that their school experiences have helped them, or will help them in the future, to work more effectively and to get along better with members of other races. *Id.* at 10. And 89 percent of all students felt that they were either “somewhat prepared” or “very prepared” to work in a job setting

where people are of a different racial or ethnic background. *Id.* at 7.

Studies of intergroup contact and interracial friendships at the earlier grade levels confirm the importance of interracial contact in increasing racial tolerance and increasing interactions with members of other racial groups over the course of an individual's lifetime. *See, e.g.,* Ellison & Powers, *supra*, at 392; Richard R. Scott & James M. McPartland, *Desegregation as National Policy: Correlates of Racial Attitudes*, 19 *Am. Educ. Res. J.* 397 (1982). For instance, the racial composition of classes has been found to have an impact on the stability of interracial friendships between white students and black students, with even stronger effects for white students. Maureen T. Hallinan, & Richard A. Williams, *The Stability of Students' Interracial Friendships*, 52 *Am. Soc. Rev.* 653 (1987) (longitudinal study of 375 students in the fourth to seventh grades in sixteen desegregated classrooms). In addition, a classroom with a positive racial climate particularly influences the stability of interracial friendships of black students. *Id.* Such friendships have important implications beyond a student's educational years, for, as one study on interracial friendships states, "[t]he tendency [among whites] to prefer whites over blacks in basic feelings of warmth and closeness and in personal social predispositions in the workplace and neighborhood does decline quite markedly . . . among whites who have both friends and acquaintances who are black." Mary R. Jackman & Marie Crane, *"Some of my*

best friends are black”: *Interracial Friendship and Whites’ Racial Attitudes*, 50 Pub. Opin. Q. 459, 470 (1986).

As the district court below noted, elementary and secondary school settings are particularly well suited to promoting these types of positive interracial contact because of the equal status of racial groups in the schools, the support of authority figures such as teachers and staff, the existence of common goals and cooperative activities, and extensive opportunities for personalized contact to disrupt stereotypes – all of which are fully supported in the research literature on the effectiveness of contact theory. *See* Jackman & Crane, *supra*. Indeed, the district court found that the Lynn schools were exemplary in promoting racial diversity and providing opportunities for meaningful interracial contacts because of the Lynn Plan. *Comfort*, 283 F. Supp. 2d at 356-57.

II. REDUCING RACIAL ISOLATION IN ELEMENTARY AND SECONDARY EDUCATION IS A COMPELLING INTEREST.

The district court’s holding that reducing racial isolation is a compelling governmental interest is fully supported both in law and in social science research. Since *Brown v. Board of Education*, 347 U.S. 483 (1954), the U.S. Supreme Court and the federal courts have recognized the harms associated with racially segregated schools, and there is a strong constitutional interest in

eliminating school segregation “root and branch” – regardless of whether it is de jure segregation established by force of law or de facto segregation. *Green v. County Sch. Bd.*, 391 U.S. 430, 437-38 (1968). As the U.S. Court of Appeals for the Second Circuit recently held in *Brewer v. West Irondequoit Central School District*, 212 F.3d 738 (2d Cir. 2000), reducing racial isolation and combating de facto desegregation constitutes a compelling governmental interest, and “indeed, such integration serves important societal functions.” *Id.* at 751 (relying on *Parent Ass’n of Andrew Jackson High Sch. v. Ambach*, 738 F.2d 574 (2d Cir. 1984); *Parent Ass’n of Andrew Jackson High Sch. v. Ambach*, 598 F.2d 705 (2d Cir. 1979)).

Both expert testimony introduced by Defendants-Appellants at trial and independent research studies on the effects of segregation and racial isolation fully support the district court’s ruling that reducing racial isolation in the Lynn schools is a compelling interest.

A. Expert Testimony and Evidence Introduced in the Court Below Demonstrate the Harms of Racial Isolation.

The district court relied on extensive testimony and evidence presented by Drs. Orfield, Dovidio, and Killen on the harms caused by racial isolation and resegregation. For instance, the court noted the strength of Dr. Orfield’s testimony that “educating students in racially isolated or segregated school

environments has an adverse impact on school attendance and performance, with long-term consequences.” *Comfort*, 283 F. Supp. 2d at 355. “Poverty exacerbates racial isolation and segregation for minority students. When schools that are already in areas with an overwhelming minority residential population and extreme poverty resegregate, racial polarization is accelerated, with all of its deleterious effects. *Id.* In addition, “as a result of racial isolation and segregation, these students forfeit the opportunity to learn from other groups and are less prepared to handle interracial settings as [adults].” *Id.* 355-56.

Similarly, the district court relied on the testimony of Dr. Dovidio and Dr. Killen to document the psychological harms associated with racial isolation, the lack of intergroup contact, and stereotyping. For instance, the court noted Dr. Killen’s extensive testimony on the harms of racial stereotyping to all students, not simply to those who are the objects of stereotypes:

Students on the receiving end of stereotypical assumptions feel stigmatized in ways that compromise their academic prospects. Students who harbor stereotypes suffer as well: their reliance on stereotypes inhibits their ability to make individualized judgments when they interact with students of other races. As a result, even students who are not themselves the objects of negative stereotypes are nonetheless impaired in their ability to live in an interracial society.

Id. at 356.

The court further expounded on the need to provide interracial contact in

the early school years in order to defeat stereotyping: “Dr. Dovidio described racial stereotyping as a ‘habit of mind’ that is difficult to break once it forms. It is more difficult to teach racial tolerance to college-age students; the time to do it is when the students are still young, before they are locked into racialized thinking.” *Id.* As Dr. Killen reinforced, “students begin to form rigid social cliques around the sixth and seventh grades, and . . . race can be a dominant factor that governs who joins what clique. Once students have found their cliques, the opportunity to defeat racial stereotypes with cross-racial interaction is lost.” *Id.*

Additionally, the court found that expert testimony reinforced the necessity of having a “critical mass” of students to prevent the harms of racial isolation: “Dr. Dovidio noted, even when students in racially imbalanced schools receive the same instruction, skills, and training, they are ‘likely actually to have more racial incidents and racial problems’ absent that critical mass of white or nonwhite students.” *Id.* at 358. Thus the harms documented by the Defendants-Appellees’ experts apply not simply to hypersegregated schools with extremely high concentrations of students of one race, but to “racially identifiable” schools that fall out of line with the general racial composition of the school district. *See* Joint Brief of Defendants-Appellees, *Comfort v. Lynn School Committee*, No. 03-2415, at 55 & n.66. Even if some schools in the

district maintain a critical mass of students of a different racial group, other schools that are racially identifiable because they deviate significantly from the benchmark figure for the district can subject students to the same harms of racial isolation, stereotyping, and lower achievement.

B. Research Studies Have Demonstrated the Harms of Racial Isolation.

As much of the literature cited in Part I of this brief documents, segregated schools not only fail to offer the significant benefits to students that racially diverse schools can offer, they can transmit significant harms in the form of lower expectations, resources, and opportunities. *See supra* Part I.B. As one recent study makes clear, racial isolation can be especially harmful because it is closely linked to concentrated poverty: “88 percent of the intensely segregated minority schools (or schools with less than ten percent white [students]) had concentrated poverty, with more than half of all students getting free lunches. That means that students in highly segregated neighborhood schools are many more times more likely to be in schools of concentrated poverty.” Gary Orfield & Chungmei Lee, *Brown at 50: King’s Dream or Plessy’s Nightmare* 21 (Jan. 2004), available at <http://www.civilrightsproject.harvard.edu/research/reseg04/resegregation04.php>. As the study summarizes, concentrated poverty often leads to a myriad of detrimental effects on students:

Concentrated poverty turns out to be powerfully related to both school opportunities and achievement levels. Children in these schools tend to be less healthy, to have weaker preschool experiences, to have only one parent, to move frequently and have unstable educational experiences, to attend classes taught by less experienced or unqualified teachers, to have friends and classmates with lower levels of achievement, to be in schools with fewer demanding pre-collegiate courses and more remedial courses, and to have higher teacher turnover. Many of these schools are also deteriorated and lack key resources. The strong correlation between race and poverty show that a great many black and Latino students attend these schools of concentrated poverty.

Id. at 21-22.

Recent studies of cities and school districts that have been experiencing resegregation offer specific instances of the harms of racial isolation. For instance, a 2003 study of the Charlotte-Mecklenburg school district, which until 2002 had been subject to court-ordered desegregation, found that the district has been experiencing resegregation and that increasing racial isolation is leading to harmful educational effects on students. Roslyn Arlin Mickelson, *The Academic Consequences of Desegregation and Segregation: Evidence from the Charlotte-Mecklenburg Schools*, 81 N.C. L. Rev. 1513 (2003). The study found that racially identifiable black schools had deficiencies in teacher resources and material resources (up-to-date media centers, ample access to current technology, and newer, safer buildings), fewer Advanced Placement courses, and fewer services for gifted and talented students. *Id.* at 1547-48. In addition, the study

found that minority students were disproportionately tracked into lower level placements and into special education classes. Student achievement scores in many racially identifiable schools were thus markedly lower than in the more racially integrated schools. *Id.* at 1558-59.

A 2004 study of the metropolitan Boston area found high levels of segregation throughout the area, despite several years of court-ordered desegregation efforts, as well as significant detrimental effects on students in racially identifiable schools:

Seven in ten white students attend schools in the outer suburbs – schools that are over ninety percent white. In contrast, more than three quarters of black and Latino students attend schools in the City of Boston or in one of the urbanized satellite cities. Not only are students segregated by race, they are also highly segregated by language. Latino and Asian English Language Learners (ELLs) are highly isolated and are much more likely to attend schools with significant numbers of Latino and Asian students, respectively, than are English Language Speakers.

Chungmei Lee, *Racial Segregation and Educational Outcomes in Metropolitan Boston* i (Apr. 2004), available at http://www.civilrightsproject.harvard.edu/research/metro/Segregation_Educational_Outcomes.pdf. The study also found that 97 percent of the “intensely-segregated-minority schools” (those over 90 percent minority) have a majority of students who are eligible for free or reduced lunch, compared to only one percent of low-minority schools (those over 90 percent white). *Id.* Educational outcomes for students in minority-identified

schools in metropolitan Boston were predictably lower than in white-identified schools. For instance, 96 percent of the students attending low-minority/low-poverty schools passed the English portion of the Massachusetts Comprehensive Assessment System (MCAS), the standardized achievement test for the state, compared to only 61 percent of students in high-minority/high-poverty schools who passed the test. *Id.* at ii. The study also found that only 45 percent of the students in high-minority/high-poverty schools were estimated to graduate from high school on time, compared to 79 percent of students in low-minority/low-poverty schools. *Id.*

III. THE LYNN PLAN IS NARROWLY TAILORED TO THE COMPELLING INTERESTS IN PROMOTING RACIAL DIVERSITY AND REDUCING RACIAL ISOLATION.

Expert testimony and research literature also support the district court's conclusion that the Lynn Plan is narrowly tailored to the compelling interests in promoting racial diversity and reducing racial isolation. Although the narrow tailoring inquiry is fact-intensive, particularly regarding the mechanics of the policy in satisfying requirements such as time-limited duration and good-faith consideration of alternatives, research studies on the necessity of employing race both to achieve the benefits of racial diversity and to prevent the harms of racial isolation provide support for the district court's holding.

Expert testimony by Dr. Dovidio and Dr. Killen in the trial court make clear that minimal numbers of students of different races are needed in order to achieve the benefits of interracial contact and to prevent stereotyping and other adverse effects of racial isolation. As the district court stated:

Drs. Killen and Dovidio alike testified that racial balance within the schools is necessary and crucial to obtain the benefits of intergroup contact that they observed in such abundance at Lynn. Simply put, unless there is a “critical mass” of white and nonwhite students in a given school, the efforts of schools to promote racial harmony lose much of their force. Such efforts are still desirable, Dr. Killen explained, but they lack significance and relevance in a school that is racially isolated or imbalanced. There is no “magical number,” in Dr. Killen’s experience, that indicates a critical mass, but she cited studies describing a 20% figure below which members of a racial minority in a given setting feel isolated or stigmatized. Dr. Dovidio underscored a critical mass estimate of 20% – a number well-established in the literature and affirmed in his own research as a prerequisite to making a meaningful amount of intergroup contact possible.

Comfort, 283 F. Supp. 2d at 357.

As both the district court and the expert witnesses for the Defendants-Appellees note, there is no fixed formula for determining the ideal number or percentage of students that can achieve the “critical mass” necessary to prevent isolation and promote racial diversity. However, there is a well-established desegregation literature focusing on benchmarks, such as the twenty percent figure, that have become widely accepted among social scientists, educators, and policy makers for the effective integration of their

schools. *See, e.g.,* Willis D. Hawley, et al., *Strategies for Effective Desegregation: Lessons from Research* (1983); Schofield, *Review of Research, supra.*

The Lynn Plan employs a range (within 15 percent of the racial composition of its overall student population for elementary schools, and within 10 percent for its middle and high schools) to determine whether its schools are avoiding racial isolation and promoting racial diversity. This range is fully consistent with the research literature and provides the Lynn schools with a highly flexible policy under which race can be factored into school assignment decisions. Moreover, as the district court stated: “If the compelling goal of the Plan is to train citizens to function in a multiracial world, actual intergroup racial contact is essential. No amount of *race-neutral* resource apportionment would accomplish this result.” *Comfort*, 283 F. Supp. 2d at 376-77 (emphasis in original). The Lynn Plan should, therefore, pass constitutional muster as a narrowly tailored policy designed to promote racial diversity and to reduce racial isolation.

CONCLUSION

For all of the foregoing reasons, the Lynn Plan should be upheld as constitutional and the District Court's judgment should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7), the undersigned certifies that this brief complies with the type-volume limitations of Fed. R. App. P. 29(d) and Fed. R. App. P. 32(a)(7)(C).

1. Exclusive of the portions of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), the brief contains 6,317 words.
2. The brief has been prepared in proportionately spaced typeface using Microsoft Word 2003 in Times New Roman 14 point type.

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CERTIFICATE OF SERVICE

I hereby certify that, on this 9th day of June, 2004, pursuant to Fed. R. App. P. 25, I have caused two copies of the foregoing brief of amicus curiae The Civil Rights Project at Harvard University to be served by United States first-class mail, postage prepaid, on the following:

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