

LATINO ACTION NETWORK; NAACP NEW JERSEY STATE CONFERENCE; LATINO COALITION; URBAN LEAGUE OF ESSEX COUNTY; THE UNITED METHODIST CHURCH OF GREATER NEW JERSEY; [REDACTED], A MINOR, BY HER GUARDIAN AD LITEM, COURTNEY WICKS; [REDACTED], A MINOR, BY HIS GUARDIAN AD LITEM, RACHEL RUEL; [REDACTED], A MINOR, BY HER GUARDIAN AD LITEM, YVETTE ALSTON-JOHNSON; [REDACTED], A MINOR, BY HIS GUARDIAN AD LITEM, YVETTE ALSTON-JOHNSON; [REDACTED], A MINOR, BY HIS GUARDIAN AD LITEM, ANDREA HAYES; [REDACTED], A MINOR, BY HIS GUARDIAN AD LITEM, MARIA LORENZ; and [REDACTED], A MINOR, BY HIS GUARDIAN AD LITEM, ELIZABETH WEILL-GREENBERG,

Plaintiffs-Appellants,

and

PLEASANTVILLE BOARD OF EDUCATION
and WILDWOOD BOARD OF EDUCATION,

Intervenor-Plaintiffs,

(Caption continued inside cover)

**SUPERIOR COURT OF
NEW JERSEY
APPELLATE DIVISION**

Docket No. A-003471-24

CIVIL ACTION

**On Appeal from an
Interlocutory Order of the
Superior Court of New
Jersey, Law Division,
Mercer County**

Trial Court Docket No.
MER-L-001076-18

Sat Below:

Hon. Robert T. Lougy,
A.J.S.C.

**BRIEF OF *AMICI CURIAE* POVERTY & RACE RESEARCH ACTION
COUNCIL, NATIONAL COALITION ON SCHOOL DIVERSITY, FAIR
SHARE HOUSING CENTER, AND THE NATIONAL HOUSING LAW
PROJECT IN SUPPORT OF PLAINTIFFS-APPELLANTS**

Date Submitted: April 27, 2026

v.

THE STATE OF NEW JERSEY; NEW
JERSEY STATE BOARD OF EDUCATION;
and LAMONT REPOLLET, ACTING
COMMISSIONER, STATE DEPARTMENT
OF EDUCATION,

Defendants-Appellees,

and

NEW JERSEY CHARTER SCHOOLS
ASSOCIATION, INC.; BELOVED
COMMUNITY CHARTER SCHOOL; ANA
MARIA DE LA ROCHE ARAQUE;
TAFSHIER COSBY; DIANE GUTIERREZ;
CAMDEN PREP, INC.; KIPP COOPER
NORCROSS, INC.; and MASTERY SCHOOLS
OF CAMDEN, INC.,

Intervenor-Defendants.

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
PRELIMINARY STATEMENT	1
STATEMENT OF AMICI CURIAE	2
STATEMENT OF FACTS AND PROCEDURAL HISTORY	3
ARGUMENT	3
I. THE STATE PERMITTED AND PROMOTED LOCAL GOVERNMENTS’ DISCRIMINATORY ACTIONS	3
A. 1787-1866: A Late Adopter of Emancipation	4
B. 1867-1900: New Jersey’s Black Population Grows Rapidly	5
C. 1900-1940: New Jersey’s Black Population Continues to Grow and Jim Crow Moves North.....	6
D. 1940-1970: New Jersey Continues to Grow and Diversify During the Second Great Migration, While Segregation Solidifies	10
II. NEW JERSEY LEGISLATION HAS TURNED RESIDENTIAL SEGREGATION WITHIN SMALL, FRAGMENTED MUNICIPALITIES INTO EDUCATIONAL SEGREGATION	12
A. Boroughitis: New Jersey’s Fragmentation into Hundreds of Municipalities	12
B. The Residency Statute Turned Residential Segregation into Educational Segregation	17
C. Some Municipalities Took Steps to Ensure Their Schools Became and Remained Segregated	19
CONCLUSION	20

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Booker v. Bd. of Ed. of City of Plainfield, Union Cnty.</i> , 45 N.J. 161 (1965)	17
<i>Hedgepeth v. Bd. of Ed. of City of Trenton</i> , 131 N.J.L. 153 (Sup. Ct. 1944)	19
<i>Levitt & Sons, Inc. v. Div. Against Discrimination in State Dep't of Ed.</i> , 31 N.J. 514 (1960)	8
<i>Rich v. Jones</i> , 142 N.J. Eq. 215 (N.J. Ch. 1948).....	8
<i>Seawell v. MacWithey</i> , 2 N.J. Super. 255 (Ch. Div. 1949)	8
<i>Shelley v. Kraemer</i> , 334 U.S. 1 (1948).....	8
<i>Taylor v. Leonard</i> , 30 N.J. Super. 116 (Ch. Div. 1954)	8
 Statutes	
L. 1878, c. 260	14
L. 1881, c. 149	5
L. 1882, c. 47	14
L. 1884 c. 219	5
L. 1894, c. 335	15
L. 1917 c. 106	5, 6
N.J. Rev. Stat. 46:15-15 (2024)	8

N.J.S.A. 18A:8-1 18

N.J.S.A. 18A:38-1 18

Regulations

N.J.A.C. 6A:22-3.1(a) 18

Constitutional Provisions

N.J. Const., art. I 1

PRELIMINARY STATEMENT

The trial court concluded, based on the State’s own statistical reports, that 46% of Black and Latino public school students in New Jersey attend schools that are more than 90% non-White. It also concluded that there are 23 intensely segregated school districts with very high poverty rates in which *nearly all* students are Black and Latino—a demographic composition that sharply contrasts with nearby districts. Despite that record of stark educational segregation, the court declined to find the State of New Jersey liable to any extent for violating the Constitution’s Anti-Segregation Clause, N.J. Const., art. I, ¶ 5, which forbids segregation—intentional or otherwise—in the State’s public schools. Why? The trial court reasoned that the “data does not demonstrate statewide unconstitutionality, across all districts, across all regions.” Plaintiffs’ Appendix 59.

As Plaintiffs and other *amici* have pointed out, the court’s conclusion has a flawed legal premise—namely, that for there to be a finding of State liability, the evidence must demonstrate that school segregation permeates every inch of the State. That is wrong. The State—and not any specific municipality—is the only responsible party for entrenched inter-municipal school segregation, even if that segregation is most obvious in under-resourced Black and Latino communities.

Moreover, the trial court’s conclusion ignores the State’s historical role in creating such communities and allowing residential segregation to flourish. *Amici* thus offer this brief to provide this Court with the necessary historical context regarding the State’s role in promoting and permitting residential segregation in New Jersey—a role that has directly led to present-day school segregation. While the State’s historical responsibility for residential segregation is not a necessary element of liability under the Anti-Segregation Clause, it is no doubt relevant. The historical record provides an explanation for *why* there are at least 23 intensely segregated school districts in the State.

Indeed, the State’s primary argument against liability is that “Plaintiffs do not identify any action State Defendants took, or failed to take, because of race that caused, or contributed to, the alleged unconstitutional condition in the public schools.” Def’s Br. 20. As *amici* explain, however, this argument is wrong as a factual matter: the State bears significant responsibility for contributing to the educational segregation that exists today, which bolsters the compelling legal points made by Plaintiffs and other *amici*. This Court should reverse the trial court’s order.

STATEMENT OF AMICI CURIAE

The **Poverty & Race Research Action Council** is a civil rights law and policy organization promoting research-based advocacy strategies to address

structural racial inequality. Founded in 2009, the **National Coalition on School Diversity** is a network of more than 50 national civil rights organizations, university-based research centers, and state and local coalitions working to expand support for government policies that promote school diversity and reduce racial and economic isolation in elementary and secondary schools. **Fair Share Housing Center**, founded in 1975, is a public interest organization dedicated to defending the housing rights of New Jersey’s low-income households. The **National Housing Law Project** is a nonprofit organization committed to advancing housing justice for poor people and communities.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Amici adopt the Statement of Facts and Procedural History set forth in Plaintiffs-Appellants’ brief.

ARGUMENT

I. THE STATE PERMITTED AND PROMOTED LOCAL GOVERNMENTS’ DISCRIMINATORY ACTIONS

New Jersey’s approach to racial equality has been one of contradictions. For example, New Jersey did not abolish slavery until 1866. Only fifteen years later, New Jersey became one of the earliest states to pass legislation prohibiting *de jure* racial segregation in public schools.¹ While the State has attempted to

¹ See Giles R. Wright, *Afro-Americans in New Jersey: A Short History* 50 (1988) (Aa8). “Aa” refers to *Amici*’s Appendix.

enshrine ideals of desegregation and equality into its Constitution and laws, it has also enabled and directed segregation for many New Jersey residents through discriminatory law and policy. New Jersey's enduring legacy of racial discrimination has prolonged segregation and, in many instances, impeded desegregation, both in residential communities and in the public education they provide.²

A. 1787-1866: A Late Adopter of Emancipation

When New Jersey became the third state to ratify the nation's Constitution in 1787, it was a slaveholding state. Enslaved people comprised roughly six percent of the State's population in 1790.³ Thereafter, New Jersey's population of enslaved individuals declined from its height of 12,422 in 1800 to 18 in 1860.⁴ New Jersey was the last Northern state to start the abolition process. It was also the last Northern state to adopt the Thirteenth Amendment in 1866 (after initially refusing to ratify it in 1865), at last putting an end to this chapter in its history.⁵

² Throughout this brief, *amici* focus on the particular ways in which residential and educational segregation has impacted Black New Jerseyans. This focus is due to space limitations and is not meant to diminish the experience of Latino and other non-White populations in New Jersey.

³ See Christopher N. Matthews, *Appendix A: Population Tables* (July 2019), montclair.edu/anthropology/wp-content/uploads/sites/36/2021/06/Slavery-in-NJ-Lit-Rev-Appendix-A-Population-Tables_Remediated.pdf (Aa26).

⁴ Montclair State Univ., *Part 6 – Slavery, Freedom, and Citizenship, 1804 – 1860*, montclair.edu/anthropology/research/slavery-in-nj/part-6 (last visited Feb. 12, 2026) (Aa29–43).

⁵ See Geneva Smith, *Legislating Slavery in New Jersey*, Princeton & Slavery Project, slavery.princeton.edu/stories/legislating-slavery-in-new-jersey (last visited Feb. 12, 2026) (Aa48–57); see also G. Wright, *supra* note 1, at 29 (Aa2).

B. 1867-1900: New Jersey's Black Population Grows Rapidly

Following the Civil War, many Black Americans sought to escape violence and repression by leaving the South in search of better social and economic opportunities. Between 1870 and 1900, the Black population in New Jersey more than doubled, from 30,658 to 69,844, with newcomers joining emancipated New Jerseyans and their descendants.⁶ Those that settled in New Jersey primarily settled in major cities where they could find low-wage work, such as Camden and Newark.⁷

Contemporaneous State laws, including its early prohibition on *de jure* segregation in public schools, purported to establish civil rights protections for all citizens. Such laws included legislation from 1881 that prohibited school segregation, but the State often did not enforce these laws.⁸ The State weakened some key protections through subsequent action, such as taking steps to limit private enforcement of the nominally protective laws.⁹ Ultimately, laws did little to protect Black New Jersey residents from the residential or educational

⁶ See G. Wright, *supra* note 1, at 79 (Aa21).

⁷ See *id.* 45–46 (Aa3–4); U.S. Census Bureau, *Population by Race, Sex, and Nationality* 401 (1880), [census.gov/library/publications/decennial/1880/vol-01-population/1880_v1-13.pdf](https://www.census.gov/library/publications/decennial/1880/vol-01-population/1880_v1-13.pdf) (Aa46) (showing increase from 826 to 8,579 in Camden and from 1,780 to 8,811 in Newark).

⁸ L. 1881, c. 149. See G. Wright, *supra* note 1, at 54 (Aa12); An Act to protect all citizens in their civil and legal rights, L. 1884 c. 219; L. 1917 c. 106.

⁹ L. 1917 c. 106 (revising the 1884 Act so as to discourage lawsuits); see also G. Wright, *supra* note 1, at 54 (Aa12) (describing the effect of the 1917 legislation).

segregation that came to define the State's communities.

C. 1900-1940: New Jersey's Black Population Continues to Grow and Jim Crow Moves North

In the early 1900s, as part of the first Great Migration, New Jersey's Black population continued to grow, nearly tripling in size between 1900 and 1930 from 69,844 to 208,828.¹⁰ Individuals and families moving to New Jersey from other states accounted for most of this population growth, with over half of the Black Americans living in New Jersey in 1910 having been born outside of the State.¹¹ World War I, in particular, was a pivotal moment for Black Americans. The war effort created demand for their labor in northern industrial cities that manufactured armaments and opened the door for many to enter better-paying, higher-skilled jobs, including jobs associated with unions.¹² During this period, New Jersey emerged as one of the most popular destinations for Black Americans, with the Black populations in Newark and Trenton, for instance, nearly doubling between 1910 and 1920.¹³

As Black Americans moved into its major cities, New Jersey began

¹⁰ See G. Wright, *supra* note 1, at 79 (Aa21).

¹¹ For instance, in 1910, over 51,000 of New Jersey's Black population of 89,760 had been born in other states. See G. Wright, *supra* note 1, at 45, 79 (Aa3, 21).

¹² See G. Wright, *supra* note 1, at 54–55 (Aa12–13).

¹³ Larry A. Green & Lenworth Gunter, *Unit 9 World War I and the Great Migration, 1915-1920*, NJ State Library (2003), njstatelib.org/research_library/new_jersey_resources/highlights/african_american_history_curriculum/unit_9_world_war_i/ (Aa58–63).

enacting zoning enabling legislation, starting in 1917.¹⁴ Zoning regulations enacted by municipalities throughout the 1920s pursuant to state authorization influenced where one could live.¹⁵ The majority of the State's municipalities took advantage of their freedom to restrict land use. Their actions, at a time when racial disparities in income, employment opportunities, and access to credit were pervasive, all but ensured that Black New Jerseyans would be locked out of opportunities for upward mobility. Many of these exclusionary zoning ordinances have remained in place even into the twenty-first century.¹⁶

With the State's blessing, local governments took other actions that were designed to segregate Black residents. Municipally chartered public housing authorities, which were created under the auspices of State law, were often segregated, with certain public housing developments only available to White families and others only available to Black families.¹⁷ For example, the Camden Housing authority ensured that public housing built in Camden in the 1940s and

¹⁴ Newman F. Baker, *Zoning Legislation*, 11 Cornell L. Rev. 164, 176 (1926) (Aa65).

¹⁵ See Theodora Kimball, *A Brief Survey of City Planning Reports in the United States, 1921*, 12 Landscape Architecture Mag. 112 (1922), [jstor.org/stable/44659586](https://www.jstor.org/stable/44659586) (Aa95–99) (noting zoning ordinances in West Orange, Cliffside Park, and Jersey City, New Jersey).

¹⁶ See Noelle van Baaren, *The Persistence of Exclusionary Zoning in New Jersey*, Rutgers Ctr. on L., Ineq., & Metro. Equity (2013), clime.rutgers.edu/publications-filtered/the-persistence-of-exclusionary-zoning-in-new-jersey (Aa100).

¹⁷ See, e.g., *Seawell v. MacWithey*, 2 N.J. Super. 255, 258–61 (Ch. Div. 1949) (striking down the City of East Orange's attempt to segregate its veteran housing program on the basis of race), *aff'd in part, rev'd in part*, 2 N.J. 563 (1949).

1950s remained strictly segregated.¹⁸

It took decades for the New Jersey Legislature and courts to enact and enforce laws against this kind of residential segregation.¹⁹ Along the way, State-enforced private law proved to be another significant obstacle to racial integration. Indeed, until the U.S. Supreme Court’s decision in *Shelley v. Kraemer* in 1948, restrictive covenants prohibited Black New Jerseyans from purchasing, renting, or occupying homes in the many municipalities and subdivisions across the state where such deed restrictions were ubiquitous.²⁰

In the 1930s, the notorious and damaging scheme to disenfranchise and segregate Black Americans known as “redlining” began to play a complementary role to exclusionary zoning across the country. This practice commenced with the advent of the Federal Housing Administration (FHA) in 1934 and the Home Owners’ Loan Corporation (HOLC) in 1935, both of which were created to assist Americans in being able to afford to purchase new homes

¹⁸ See Howard Gillette, Jr., *Camden After the Fall* 71–72 (2006) (Aa107–08) (describing segregated projects in Camden); see also *Taylor v. Leonard*, 30 N.J. Super. 116, 120 (Ch. Div. 1954) (holding the Housing Authority of the City of Elizabeth liable for segregation in public housing projects).

¹⁹ See, e.g., *Levitt & Sons, Inc. v. Div. Against Discrimination in State Dep’t of Ed.*, 31 N.J. 514 (1960) (holding that the New Jersey Division Against Discrimination had the authority to hear a suit brought by Black potential homeowners against the developer of Levittown).

²⁰ For example, prior to 1939, the municipality of Mount Ephraim inserted racially restrictive covenants to all deed conveyances. *Rich v. Jones*, 142 N.J. Eq. 215, 216 (N.J. Ch. 1948). These restrictive covenants became unenforceable in 1948 but may remain in deeds to this day. *Shelley v. Kraemer*, 334 U.S. 1, 23 (1948) (rendering racially restrictive covenants unconstitutional); N.J. Rev. Stat. 46:15-15 (2024) (finding that racially restrictive covenants may still appear in deeds).

and to avoid foreclosure at the height of the Great Depression.²¹ Federal agencies, however, regularly and intentionally excluded Black Americans from the benefits provided by these programs, preventing them from accessing loans that would have allowed them to move into wealthier, Whiter communities and instead confining them to specific neighborhoods.²²

Evidence demonstrates that federal HOLC officials engaged in these redlining practices in close coordination with state and local officials.²³ This was particularly evident in New Jersey, where every majority-Black neighborhood received a “D” rating, and no neighborhood in Newark received an “A” rating.²⁴ The FHA did not insure a single mortgage in the heavily Black cities of Camden and Paterson until 1966.²⁵ Likewise, HOLC maps of Black communities in Bergen, Essex, Mercer, and Union Counties were a major reason why Black families in those communities could not obtain mortgage loans from private banks.²⁶

²¹ See Kenneth T. Jackson, *Crabgrass Frontier* 203–06 (1985) (Aa129–32).

²² See K. Jackson, *supra* note 21, at 207–13 (Aa133–39); Richard Rothstein, *The Color of Law* 64–66 (1st ed. 2017) (Aa158–60) (describing how federal agencies blocked sales to Black Americans in Fanwood); Nancy Ann Spiller, *Racial Segregation in New Jersey’s Public Schools: Progressive Public Policy at a Crossroads* 30–31 (Oct. 2001) (Litt.D. dissertation, Drew Univ.) (Aa166–67).

²³ See K. Jackson, *supra* note 21, at 225 (Aa151) (“[H]ousing authorities were typically made up of prominent citizens who were more anxious to clear slums and protect real-estate values than they were to rehouse the poor.”).

²⁴ N. Spiller, *supra* note 22, at 31 (Aa167).

²⁵ See K. Jackson, *supra* note 21, at 213 (Aa139).

²⁶ Interactive HOLC Map, Mapping Inequality, dsl.richmond.edu/panorama/redlining/map#loc=4/38.0448/-95.8425 (last visited Feb. 12, 2026) (Aa179).

D. 1940-1970: New Jersey Continues to Grow and Diversify During the Second Great Migration, While Segregation Solidifies

Starting in the 1940s, African Americans from the South moved to New Jersey to meet the high demand for laborers that was driven, in part, by World War II.²⁷ At the same time, the discriminatory state and federal housing policies discussed above isolated Black Americans in the central cores of Newark and other major cities, while providing White Americans the opportunity to move to the suburbs and other municipalities separated from the urban cores.²⁸ Policies like the G.I. Bill further exacerbated this residential segregation, as White veterans were able to make use of the benefits provided under the law and Black veterans largely were not.²⁹

The exodus of White families and well-paying jobs from racially diverse cities led to lost property tax revenue and a corresponding loss of funding for schools in those areas.³⁰ By confining Black residents to neglected urban cores, the policies and practices of the State and its municipalities thus directly affected

²⁷ Nat'l Park Serv., Place: Paterson, New Jersey, nps.gov/places/paterson-new-jersey.htm (last visited Feb. 12, 2026) (Aa182–83).

²⁸ See generally Noelle Van Baaren, *The Persistence of Exclusionary Zoning in New Jersey*, Rutgers Ctr. on L., Ineq. & Metro. Equity (2013) (Aa100).

²⁹ See N.J. Inst. For Soc. Just., *Erasing New Jersey's Red Lines: Reducing the Racial Wealth Gap Through Homeownership and Investment in Communities of Color* 9 (2020), njsj.org/wp-content/uploads/2023/05/Erasing_New_Jerseys_Red_Lines_Final.pdf (Aa185).

³⁰ See N. Spiller, *supra* note 22, at 44–45 (Aa168–69); Nat'l Advisory Comm'n on Civ. Disorder *Report of the National Advisory Commission on Civil Disorders* 30–31 (1968), belonging.berkeley.edu/sites/default/files/kenner_commission_full_report.pdf?file=1&force=1 (Aa187–88).

the funding level, and therefore quality, of the schools that Black New Jerseyans could access.

In the 1960s, industrial cities in the Midwest and Northeast, including in New Jersey, began to lose the kinds of manufacturing jobs that had provided upward mobility for generations of immigrants and for some Black Americans who moved north during the Great Migration.³¹ Some jobs relocated to suburban industrial parks in the same states, moves that were facilitated by state actors through highway construction decisions and lucrative tax incentives.³² Stymied by rampant housing discrimination and having had fewer opportunities to build wealth while manufacturing jobs were still readily available, Black families did not have the same chance to relocate to new suburban job centers.³³ The combination of economically mobile White families leaving cities for suburban job opportunities with Black families not having the opportunity to relocate and having less earning potential where they remained contributed to the evisceration of city tax bases.³⁴

³¹ See Donald Scarry, *State of Emergency: New Jersey's Industrial Decline*, NJBIZ (Nov. 11, 1992), njbiz.com/state-of-emergency-new-jerseys-industrial-decline/ (Aa205–09).

³² Robert Weaver, *The Suburbanization of America* 26–27 (1975), files.eric.ed.gov/fulltext/ED123303.pdf (Aa235–36). In Camden, “an interstate highway destroyed some 3,000 low-income housing units from 1963 to 1967.” R. Rothstein, *supra* note 22, at 129 (Aa162).

³³ Raymond Mohl, *The Interstates and the Cities: Highways, Housing, and the Freeway Revolt*, Poverty & Race Rsch. Action Council at 24–25 (2002), prrac.org/pdf/mohl.pdf (Aa269–70).

³⁴ Nat’l Advisory Comm’n Rep., *supra* note 30, at 30–31 (Aa187–88) (discussing Newark: “Whoever was able to move to the suburbs, moved.”).

II. NEW JERSEY LEGISLATION HAS TURNED RESIDENTIAL SEGREGATION WITHIN SMALL, FRAGMENTED MUNICIPALITIES INTO EDUCATIONAL SEGREGATION

In New Jersey, by law, public school attendance is a function of residence. Thus, the same factors that have long contributed to residential segregation have a corresponding effect on school segregation.³⁵ There is also a long history of the State permitting wealthier and Whiter communities to splinter off to avoid sharing space—including in public schools—with the residents of nearby racially and socioeconomically diverse communities. The State has not just permitted practices that have resulted in educational segregation; it has enabled and perpetuated those practices, both historically and currently, through its inflexible application of the Residency Statute.

A. **Boroughitis: New Jersey’s Fragmentation into Hundreds of Municipalities**

The story of residential segregation in New Jersey—and thus of the educational segregation that has played out between municipal borders—cannot be told without first conveying how borders are created within the State. Although one of the smallest states in the country by area, New Jersey is partitioned into more than 500 small, sub-county municipalities. These

³⁵ See Tim Evans, *School Segregation in N.J. Is Not an Accident*, New Jersey Future (Oct. 11, 2023), njfuture.org/news/school-segregation-in-nj-is-not-an-accident/ (Aa322–24) (explaining how “[s]egregated schools are born from segregated communities”).

municipalities provide basic services to residents—including, of particular note, the educational services offered by school districts.³⁶ The system of small municipalities, each with significant power conferred by the State, and each with responsibility for running and funding their own schools, has created incentives for wealthier municipalities to establish zoning laws and other practices that exclude residents who are disproportionately poorer and non-White. The State’s choice to enable these unusually small and homogenous municipalities has both created and reinforced racial segregation between municipalities, and thus between school districts.³⁷

New Jersey’s history of municipal fragmentation dates back to the early nineteenth century.³⁸ As the State grew, it was unable to fund road maintenance, which resulted in counties, and in turn, towns, taking on that obligation and expense.³⁹ When conflicts arose regarding the obligation to pay for such local needs, townships often partitioned into even smaller districts to protect their

³⁶ See Tim Evans, *School District Fragmentation and Residential Segregation*, New Jersey Future (Nov. 9, 2020), njfuture.org/research-reports/school-district-fragmentation-and-residential-segregation/ (Aa325–31) (“New Jersey’s public school landscape is particularly fragmented—it averages 28 school districts per county, the most of any state.”).

³⁷ See *ibid.* (“If a fragmented system of public education creates both the incentive and the means to exclude households with lower incomes . . . it should not be surprising if such practices also serve to exclude certain racial minorities, given racial disparities in household income.”).

³⁸ See Andrew J. Bruck & H. Joseph Pinto III, *Overruled by Home Rule: The Problems with New Jersey’s Latest Effort to Consolidate Municipalities*, 32 Seton Hall Legis. J. 287, 304–15 (2008) (Aa351–62) (describing the origins of fragmentation in New Jersey townships).

³⁹ *Id.* at 306–07 (Aa353–54).

own assets and provincial interests.⁴⁰ Continuing into the mid-nineteenth century, commuter suburbs came into being along the railway lines between New York and Philadelphia, creating what are known today as “doughnut hole” communities: wealthier, small commuter suburbs inside larger, more rural towns whose residents frequently had divergent priorities for the provision of public services.⁴¹ The commuter suburbs in the nineteenth century often incorporated into their own municipalities or boroughs, helping insulate themselves from the responsibility to fund schools in neighboring communities.⁴²

The Legislature’s enactment of the “Borough Acts” of 1878 and 1882 further accelerated this trend, allowing any area not exceeding four square miles (later reduced to two square miles) and 5,000 people (later reduced to 3,000 people) to introduce a referendum to incorporate as its own borough.⁴³ A large number of New Jersey communities took advantage of the Borough Acts to create their own miniature municipalities that insulated themselves from neighboring communities, thereby making themselves functionally independent

⁴⁰ *Id.* at 307 (Aa354); *see also id.* at 314 (Aa361) (“[C]onsequently, most of the municipalities created between World War I and the Great Depression . . . incorporated to ensure that African-Americans and immigrants did not move in.”).

⁴¹ *See id.* at 308, 310–11 (Aa355, 357–58); *see also* Alan Karcher, *New Jersey's Multiple Municipal Madness* 80–81 (1998) (Aa403–04).

⁴² *See* Bruck & Pinto, *supra* note 38, at 310–11 (Aa357–58).

⁴³ L. 1878, c. 260; L. 1882, c. 47; *see* Bruck & Pinto, *supra* note 38, at 311 (Aa358) (explaining the effect of the Borough Acts of 1878 and 1882).

with respect to school funding.⁴⁴

As the State divided itself into smaller and smaller municipalities through the creation of boroughs and other small communities, the number of school districts outpaced even the number of municipalities, and townships often contained more than one school district.⁴⁵

In an apparent attempt to target intra-municipal wealth disparities in schools that existed even then, the New Jersey legislature passed the Township School Law of 1894 (the “Township School Law”), which mandated each township could only have one school district within its borders.⁴⁶ Section 24 of the Township School Law, however, created a gigantic loophole, providing that “each city, borough, and incorporated town shall be a school district, separate and distinct from the township school district.”⁴⁷ Section 24 thus undermined the Township School Law’s overarching goal by authorizing cities, boroughs, and incorporated towns to create and maintain their own school districts that were separate from the standard township school district.⁴⁸

⁴⁴ See Bruck & Pinto, *supra* note 38, at 312 (Aa359).

⁴⁵ See *ibid.* (documenting the beginnings of “boroughitis”).

⁴⁶ L. 1894, c. 335, § 13 (“[T]he several school districts in each township shall be consolidated into one school district . . .”).

⁴⁷ See L. 1894, c. 335, § 24; see also A. Karcher, *supra* note 41, at 82 (Aa405).

⁴⁸ A. Karcher, *supra* note 41, at 82–83 (Aa405–06) (quoting Benjamin C. Wooster, Public Education, in *History of Bergen County, New Jersey 1630-1923*, 200, 217 (Frances A. Johnson Westervelt 1923)).

Once boroughs and other micro-municipalities took advantage of Section 24 of the Township School Law, in many counties, school districts effectively became coterminous with municipalities.⁴⁹ Thereafter, many wealthy communities took advantage of the Borough Acts by incorporating their own municipalities for the purpose of maintaining control of their own school districts, effectively refusing to share “their” tax resources.⁵⁰

This led directly to what scholars have termed “boroughitis,” an epidemic overabundance of micro-municipalities and corresponding school districts, particularly in Bergen County, where 26 new boroughs incorporated in the year 1894 alone.⁵¹ This rapid secession of wealthy suburbs from poorer neighboring areas continued until 1897, when lawmakers attempted to fix the problem by requiring specific legislative authorization to incorporate as a new borough.⁵² Despite this restriction, wealthy, White, politically connected communities successfully continued the move toward smaller, fragmented municipalities and school districts.⁵³ The New Jersey Legislature provided approval of new incorporations for wealthier, more politically connected constituencies, and

⁴⁹ See A. Karcher, *supra* note 41, at 82, 85–86 (Aa405, 408–09).

⁵⁰ See *ibid.*

⁵¹ See Bruck & Pinto, *supra* note 38, at 312 (Aa359); A. Karcher, *supra* note 41, at 82–83 (Aa405–06).

⁵² See Bruck & Pinto, *supra* note 38, at 312 (Aa359).

⁵³ See *id.* at 313–14 (Aa360–61).

communities sought these incorporations in order to impose alcohol bans and zoning restrictions, while also addressing tax concerns linked to school funding.⁵⁴

This trend of severing wealthier, Whiter municipalities—and thus school districts—from ones that were poorer and less White continued through World War I.⁵⁵ Though the rate of incorporation ultimately slowed, the State was unable to reverse it.⁵⁶ Thus, New Jersey remains splintered into over 500 small, relatively internally homogenous municipalities, each with its own school district.⁵⁷

B. The Residency Statute and Educational Segregation

Understanding the history of residential segregation in New Jersey is critical to understanding why there is present-day educational segregation.

⁵⁴ See *id.* at 313 (Aa360) (discussing the Tavistock Borough’s attempt to ignore alcohol bans and noting that members of Tavistock’s Golf Course club “were among the state’s most influential residents and one in particular tapped his connections with the governor to approve the tiny [15-person] incorporation.”).

⁵⁵ *Id.* at 313–14 (Aa360–61); see also G. Wright, *supra* note 1, at 68 (Aa15).

⁵⁶ See *Booker v. Bd. of Ed. of City of Plainfield, Union Cnty.*, 45 N.J. 161, 168 (1965) (explaining “feeling[s] of racial inferiority and . . . denial of equal educational opportunities . . . may appear in intensified form when . . . *segregation in fact*, though not official policy, *results from long standing housing and economic discrimination and the rigid application of neighborhood school districting*”) (emphasis added).

⁵⁷ New Jersey has 564 municipalities. N.J. State League of Muns., *Types of Government in New Jersey*, njlm.org/644/Forms-of-Municipal-Government---New-Jers (last visited Feb. 12, 2026) (Aa417–19). New Jersey has 590 operating school districts. N.J. Dep’t of Educ., *New Jersey Public Schools Fact Sheet 2024-2025*, nj.gov/education/doedata/fact.shtml (last visited Feb. 12, 2026) (Aa420–21). Most of “New Jersey’s school districts are quite small and serve relatively homogenous populations.” Gary Orfield *et al.*, *New Jersey’s Segregated Schools: Trends and Paths Forward*, C.R. Project at 31 (2017) (Aa423).

Indeed, that history notwithstanding, the State has opted to tie school attendance to municipal residence, thus ensuring that segregated municipalities will inevitably lead to segregated schools.

In 1967, the State enacted the “residency statute,” which directs that “[p]ublic schools shall be free to . . . persons over five and under 20 years of age” if that person “is domiciled within the school district.” N.J.S.A. 18A:38-1.⁵⁸ Because school districts and municipalities are coterminous in New Jersey, children must go to school in their municipality in order to take advantage of a free public-school education. But in creating this requirement, the State has ensured that the same factors that have contributed to residential segregation—such as exclusionary zoning—have had a corresponding effect on school segregation.⁵⁹

The State did not and does not have to structure school attendance in this manner. Its decision to do so, combined with its role in creating and perpetuating racially and socioeconomically segregated municipalities, has been a primary driver of the undisputedly segregated schools that persist in the State—in

⁵⁸ See also N.J.S.A. 18A:8-1 (“Each municipality [in New Jersey] shall be a separate local school district except as otherwise provided”); N.J.A.C. 6A:22-3.1(a).

⁵⁹ See Tim Evans, *School Segregation in N.J. Is Not an Accident*, New Jersey Future (Oct. 11, 2023) (Aa322–24) (“Despite being one of the most racially diverse states in the country, New Jersey remains stubbornly segregated at the local level. . . . Segregated schools are born from segregated communities.”).

violation of the Constitution’s requirements.

C. Some Municipalities Took Steps to Ensure Their Schools Became and Remained Segregated

Even when there was some diversity within a municipality that did not result in splintering, many municipalities permitted discriminatory behavior that ensured schools remained segregated. Indeed, following World War I, many northern New Jersey communities implemented separate schools.⁶⁰ And many did so directly “in response to the increase in black population.”⁶¹ For example, in 1949, the Newark Board of Education initiated a policy that functionally permitted White students to transfer out of predominantly Black schools.⁶² This policy directly fostered segregation in Newark’s schools.⁶³ (Today, the Newark Public School District is only 7% White and is 91% Black and Latino.)⁶⁴

Policies like this led to an increased number of segregated schools across

⁶⁰ Marion Thompson Wright, *The Education of Negroes in New Jersey* 185 (1941) (Aa425); G. Wright, *supra* note 1, at 68 (Aa15) (“On the eve of World War II, from Princeton south every city or town with an appreciable black population supported a dual system of elementary schools.”).

⁶¹ Davison Douglas, *Jim Crow Moves North: The Battle over Northern School Segregation, 1865-1954* 142 (2005) (Aa429).

⁶² See Robert Culvin, *Inside Newark: Decline, Rebellion, and the Search for Transformation* 48 (2014) (Aa436). Apart from Newark, the 1881 law was regularly circumvented throughout the State. See M. Wright, *supra* note 60, at 198 (Aa426).

⁶³ N. Spiller, *supra* note 22, at 45 (Aa169). Similarly segregationist policies were also instituted in Trenton. See *Hedgepeth v. Bd. of Ed. of City of Trenton*, 131 N.J.L. 153, 153 (Sup. Ct. 1944) (describing Trenton’s policy of sending Black children to a segregated school).

⁶⁴ Nicole Rosenthal, *How Segregated Is Your NJ School? See District Breakdown*, Patch (Mar. 25, 2024), patch.com/new-jersey/across-nj/how-segregated-your-nj-school-see-district-breakdown (Aa437–46).

the State—70 by 1935⁶⁵—and, by 1940, “there were more segregated schools in New Jersey than at any time since the enactment of the 1881 antisegregation legislation.”⁶⁶ For this reason and others, New Jersey was often referred to as “the Mississippi of the north” by Black leaders.⁶⁷

CONCLUSION

The record in this case definitively demonstrates that the State’s actions have caused persistent residential segregation among its 500-plus municipalities. And its mandate that schoolchildren attend the public school within the boundaries of their municipality all but guarantees that segregation will be the result in at least some jurisdictions—and likely for generations. This Court can and should intervene to correct that miscarriage of justice.

For all the reasons set forth above and in Plaintiffs’ briefing, *Amici* urge this Court to uphold the trial court’s factual findings but reverse that court’s denial of partial summary judgment.

Respectfully submitted,

⁶⁵ M. Wright, *supra* note 60, at 185 (Aa425).

⁶⁶ D. Douglas, *supra* note 61, at 142 (Aa429). The 1881 law was regularly circumvented by municipalities throughout the state. *See infra* n.78 and accompanying text.

⁶⁷ D. Douglas, *supra* note 61, at 156 (Aa430).

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(*admitted pursuant to R. 1:21-3(c))

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