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**POINTS RELIED ON**

- I. THE CONSTITUTIONAL STANDARD OF EDUCATIONAL ADEQUACY REQUIRES HIGH-QUALITY PRE-KINDERGARTEN PROGRAMS FOR LOW-INCOME CHILDREN**
  - A. THE CONSTITUTION MANDATES A SYSTEM OF EDUCATION THAT PROVIDES ALL CHILDREN THE OPPORTUNITY TO SUCCEED IN SCHOOL AND ACHIEVE THE STATE'S LEARNING AND PERFORMANCE STANDARDS**
  - B. THE TRIAL TESTIMONY OF MISSOURI EDUCATORS SUPPORTS THE INCLUSION OF PREKINDERGARTEN FOR LOW-INCOME CHILDREN IN A CONSTITUTIONALLY ADEQUATE SYSTEM OF EDUCATION**

**C. STATE POLICY ENACTMENTS ACKNOWLEDGE THE NECESSITY OF PUBLICLY FUNDED PRE-KINDERGARTEN FOR ECONOMICALLY DISADVANTAGED CHILDREN**

**D. NATIONAL EARLY CHILDHOOD POLICY RECOGNIZES THAT HIGH QUALITY PRE-KINDERGARTEN FOR LOW-INCOME CHILDREN IS AN ESSENTIAL COMPONENT OF AN ADEQUATE EDUCATION**

**II. MANY OF THE STATE'S YOUNG CHILDREN ARE LOW-INCOME; ARE AT RISK OF SCHOOL FAILURE; AND REQUIRE HIGH-QUALITY PRE-KINDERGARTEN PROGRAMS FOR THE OPPORTUNITY TO AVAIL THEMSELVES OF A CONSTITUTIONALLY ADEQUATE EDUCATION**

**A. YOUNG LOW-INCOME CHILDREN ARE AT GREAT RISK OF SCHOOL FAILURE BEFORE THEY EVEN ENTER KINDERGARTEN**

**B. HIGH-QUALITY PRE-KINDERGARTEN PROGRAMS  
HELP YOUNG CHILDREN OVERCOME POVERTY'S  
EFFECTS ON LEARNING AND SUCCEED IN  
SCHOOL**

## **INTEREST OF *AMICI CURIAE***

Citizens for Missouri's Children ("CMC") and the Missouri Child Care Resource and Referral Network ("MOCCRRN") implement well-informed, strategic policy agendas aimed at influencing all levels of government to provide high-quality early childhood education programs for low-income and disadvantaged children. CMC and MOCCRRN also educate the general public about the critical need for these programs. For example, in 2006, both organizations participated in developing Missouri's Early Childhood Comprehensive System (ECCS), a statewide plan produced under the auspices of the Missouri Department of Health and Senior Services to identify the needs and promote the well-being of all young children. Achieving school readiness for all Missouri children is the overarching goal of the ECCS; access to high quality early childhood programs is one of five specific policy recommendations.

CMC and MOCCRRN's expertise in early childhood education is derived from their knowledge of the scientific research establishing that disadvantaged children require high-quality pre-kindergarten programs in order to avail themselves of an adequate education. Through this Brief, the organizations will discuss this research and how it relates to the General Assembly's constitutional duty to provide Missouri's children with an adequate public education.

CMC, a nonpartisan, nonprofit public interest organization, has advocated for twenty-five years for public policies that support children's well-being and

healthy development. CMC's mission is based on the belief that all children should benefit from public policies that guarantee their protection and security in nurturing environments that provide them with the opportunity to thrive, develop to their greatest potential, and grow into caring, responsible, and productive adults.

CMC produces *Kids Count Missouri*, an annual compilation of data that tracks the well-being of Missouri's children. The information is presented to state policymakers and citizens to educate them about whether the state's children have the resources and support they need for healthy development.

Utilizing the information gathered in *Kids Count Missouri*, CMC has developed three platforms and legislative priorities for Missouri's children: health care, child protection, and early care and education. The organization's early childhood platform provides, "State funding for childcare and early education remains inadequate, despite extensive research that shows the earlier children start learning, the better their chances for long-term success." CMC actively advocates before the state legislature and the executive branch for a larger public investment in pre-kindergarten programs for children ages three and four, and improved access to these opportunities, especially for low-income children and those with the greatest needs.

MOCCRRN coordinates the activities of the eight child care resource and referral agencies that serve all 115 counties in Missouri. The Network's three-part mission is to: connect families to child care and early learning programs, improve the quality and supply of those programs, and collaborate with business and civic

leaders to make early learning and child care safe and enriching for children. The organization works to improve the quality and supply of child care and early learning programs through a number of different strategies, including data collection and analysis. MOCCRRN provides data to government agencies and policymakers to guide funding decisions that impact the quality and supply of child care and early learning programs. The organization advocates for the development of a state pre-kindergarten program that fully supports all children from low-income families. MOCCRRN's executive director was appointed by the Governor to serve on the statutorily created Coordinating Board for Early Childhood ("Coordinating Board"). In 2008, the Coordinating Board formed the Missouri Panel on School Readiness ("Panel"), on which MOCCRRN's executive director also served. The Panel examined the state's early childhood education infrastructure and rendered nine recommendations, chief among them that the State establish a publicly funded pre-kindergarten program by 2011 that fully supports all children from low-income families.

## ARGUMENT

### **I. Summary of Argument**

*Amici curiae*, Citizens for Missouri’s Children (“CMC”) and the Missouri Child Care Resource and Referral Network (“MCCRRN”), urge this Court to find that the public education system mandated by the Missouri Constitution requires the Missouri General Assembly to adopt effective and adequately funded early childhood education programs designed to address the impact of poverty on the educational success of Missouri’s youngest children. This Brief will focus on the critical need for high-quality pre-kindergarten programs for economically disadvantaged children and the General Assembly’s duty under the State Constitution to ensure the opportunity for low-income children to participate in such programs.<sup>1</sup>

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<sup>1</sup> There are numerous models of effective pre-kindergarten programs that the legislative and executive branches could choose for Missouri’s children. Generally, these programs are center-based and provide developmentally appropriate educational experiences, health assessments and referrals, and family support services for children during the year or years before kindergarten. W. Steven Barnett, et al., The State of Preschool: 2007 State Preschool Yearbook (2007) (“State Preschool Yearbook”), *available at* <http://nieer.org/yearbook/pdf/-yearbook.pdf>. In all states, including Missouri, participation in a state-funded pre-kindergarten program is voluntary on the part of families. *See* W. Steven Barnett,

Decades of scientific research establishes that high-quality pre-kindergarten programs for economically disadvantaged children are an integral part of a modern public education system. *See infra*, Part III. Studies show that by age five, low-income and disadvantaged children have significant early learning deficits that prevent them from succeeding once they enter kindergarten. *Infra*, Part III (a). In the absence of effective early intervention measures, these deficiencies are likely to grow and the risk of academic failure increases. *Infra*, Part III (a). Despite the obstacles faced by disadvantaged children, however, school failure need not occur. High-quality pre-kindergarten programs help close early learning gaps and enable low-income children to succeed academically and later in life. *Infra*, Part III (b).

In fact, the General Assembly itself has recognized pre-kindergarten is essential, as evidenced by its establishment of the Early Childhood Development, Education and Care Fund in 1998 to, among other things, provide funding to

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Kirsty Brown & Rima Shore, The Universal vs. Targeted Debate: Should the United States Have Preschool for All?, *Preschool Policy Matters*, Apr. 2004, at 11, *available at* <http://nieer.org/resources/policybriefs/6.pdf> (noting that public opinion does not support mandatory pre-kindergarten programs). *See also* section 313.835 (3)(d), RSMo (providing that funds from Missouri’s Early Childhood Development, Education and Care Fund “shall be annually appropriated for voluntary, early childhood development, education and care programs serving children”).

programs that enable children to enter kindergarten “ready to learn.” Section 313.835.1(3)(d), RSMo. Unfortunately, however, the General Assembly has failed to fund high-quality pre-kindergarten at a level sufficient to serve a significant number of low-income children, much less all such children. *See* State Preschool Yearbook at 84.

*Amici curiae* CMC and MOCCRRN strongly believe the Missouri Constitution compels the General Assembly to address the early learning deficits of low-income children because an adequate education system cannot relegate these children to prospective academic failure and limited lifetime success. *Amici curiae* urge the Court to find that the Constitution requires state-funded, high-quality pre-kindergarten programs for low-income children.<sup>2</sup>

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<sup>2</sup> *Amici curiae* fully support Appellants’ claims respecting the other glaring constitutional defects in Missouri’s education system. Pre-kindergarten programs do not substitute for effective K-12 programs and gains made in the pre-kindergarten years must be reinforced and strengthened throughout elementary and secondary schooling. In order to start on an equal footing with more advantaged peers and have the opportunity to continue to learn and progress throughout school, disadvantaged children need effective pre-kindergarten programs *and* more intensive interventions from kindergarten through twelfth grade. Because the opportunity to start kindergarten ready to learn and on equal footing is so absolutely essential to the adequacy of the public education system

**II. The Constitutional Standard of Educational Adequacy Requires High-Quality Pre-Kindergarten Programs for Low-Income Children**

- a. The Constitution mandates a system of education that provides all children the opportunity to succeed in school and achieve the State’s learning and performance standards**

The State of Missouri is constitutionally required to maintain a system of free public education that provides for the “general diffusion of knowledge and intelligence” that is necessary to preserve the “rights and liberties of the people.” Mo. Const. art. IX, § 1(a). The right to a public education “is not a privilege dependent on the discretion of any one, but is a fundamental right.” *Concerned Parents, et al., v. Caruthersville Sch. Dist. 18, et al.*, 548 S.W.2d 554, 560 (Mo. 1977), quoting *State ex rel. Robers v. Wilson*, 297 S.W. 419, 420 (Mo.App.1927). The right belongs to *every* child in Missouri under the age of twenty-one, without qualification. *See* Mo. Const. art. IX, § 1(a) (requiring the provision of a system of public education for “all persons in [the] state within the ages not in excess of twenty-one years”).

The State’s constitutional duty to provide a high quality pre-kindergarten program for low-income children is rooted in its own formulation of the public

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and to the potential for success in educating children in poverty, these *amici curiae* will address only the pre-kindergarten issue.

education system required under article IX. The General Assembly, the Missouri State Board of Education (“State Board”), and the Missouri Department of Elementary and Secondary Education (“DESE”) have established high academic standards and other performance standards for Missouri students and school districts, which define the contours of a constitutionally adequate education. *See* section 160.500, RSMo, et seq., [Outstanding Schools Act of 1993]; section 160.251, RSMo, et seq., [Excellence in Education Act of 1985]; 5 C.S.R. 30-345.010 [Missouri School Improvement Program] (CEE Exh. 009); 5 C.S.R. 50-280.010 [Student Assessment] (CEE Exh. 010). Scientific research establishes that many low-income children will not have the opportunity to achieve the State’s standards or avail themselves of the public education mandated by the Constitution without access to high quality early childhood programs that prepare them for academic success. *See infra*, Part III.

With the enactment of the Outstanding Schools Act in 1993, the General Assembly mandated the adoption of state academic standards that defined a constitutionally adequate education as one that provides students the opportunity to an education that enables them to successfully progress through school and graduate high school, function productively as workers, participate in post-secondary education, and engage in civic life. Section 160.514.1, R.S.Mo; *accord Robinson v. Cahill (Robinson I)*, 303 A.2d 273, 295 (N.J. 1973), *cert. denied, sub nom.* (defining a “thorough and efficient” education under the state constitution as “that educational opportunity which is needed in the contemporary setting to equip

a child for his role as a citizen and as a competitor in the labor market”); *Vincent v. Voight*, 236 Wis.2d 588, 600-01 (Wis. 2000) (concluding that “an equal opportunity for a sound basic education is one that will equip students for their roles as citizens and enable them to succeed economically and personally”); *Campaign for Fiscal Equity, Inc. v. State*, 801 N.E.2d 326, 330-32 (N.Y. 2003) (holding that the constitutional mandate for a system of “sound basic” education must provide “the opportunity for a meaningful high school education, one which prepares [students] to function productively as civic participants”); *Neeley v. West Orange-Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746, 787 (Tex. 2005) (stating that Texas children must be provided “access to a quality education that enables them to achieve their potential and fully participate now and in the future in the social, economic, and educational opportunities of our state and nation”).

The State Board has implemented the Outstanding Schools Act by adopting Performance and Knowledge Standards that “incorporate what students should know and be able to do.” 5 CSR 50-375.100. (CEE Exh. 008). The Performance Standards consist of four goals with a series of benchmarks that measure attainment of each goal. The Knowledge Standards, which mandate schools to provide “a solid foundation of factual knowledge and basic skills in the traditional content areas,” consist of a set of seventy-three areas of knowledge and skills that Missouri students are expected to master. *See Overview of Knowledge Standards*, available at <http://dese.mo.gov/standards/content.html>. For example, the Communication Arts Knowledge Standards expect students to acquire knowledge

of and proficiency in “reading and evaluating fiction, poetry and drama;” while in Science, students are expected to have knowledge of the “impact of science, technology and human activity on resources and the environment.” 5 CSR 50-375.100(1)(E)(2), -(I)(8). (CEE Exh. 008).

DESE has further refined the Performance and Knowledge Standards through development of the Missouri Curriculum Frameworks (“Curriculum Frameworks”), *available at* <http://dese.mo.gov/divimprove/curriculum/frameworks/preface.html>. The Curriculum Frameworks provide student grade level expectations in the areas of communication arts, fine arts, health and physical education, mathematics, science, and social studies, and are intended “to provide assistance to districts in aligning local curriculum with the [Knowledge] Standards.” *Id.* The Curriculum Frameworks are based on the belief that “all students are capable of learning and [being] challenged by high expectations.” *Id.*

Missouri’s knowledge, performance, and curriculum standards embody, at least in part, Missouri’s definition of a constitutionally adequate education. *Accord e.g., Abbott v. Burke (Abbott IV)*, 693 A.2d 417, 432 (N.J. 1997) (finding that the state’s curriculum and performance standards “embody the substantive content of a thorough and efficient education”); *Montoy v. State (Montoy II)*, 102 P.3d 1160, 1164 (Kan. 2005) (noting that the state’s school performance accreditation system, which is “based upon improvement in performance that reflects high academic standards and is measurable” and its standards for individual and school performance levels, comprise the legislature’s determination of a constitutionally

“suitable” education system) (quoting Kan. Stat. Ann. § 72-6539(a)); *Columbia Falls Elem. Sch. Dist. 6 v. State*, 109 P.3d 257, 312 (Mont. 2005) (“Unless funding relates to needs such as academic standards . . . and performance standards, then the funding is not related to the cornerstones of a quality education.”); *Neeley v. West Orange-Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746, 787 (Tex. 2005) (an adequate public education system is one that is “*reasonably* able to provide” students with a “*meaningful opportunity* to acquire the essential knowledge and skills reflected in . . . curriculum requirements”)(citing district court decision) [emphasis in original]

Unfortunately, from the outset, many low-income children lack the skills and knowledge required to meet the State’s performance and knowledge standards. *See infra*, Part III (a). Research shows that these children enter school far behind their more advantage peers and are likely to remain behind. A state funded high-quality pre-kindergarten program for low-income children is an essential component of a constitutionally adequate education system because, without it, these children may never have the opportunity to attain Missouri’s educational standards. *See infra*, Part III (a) and (b).

The assumption that learning is sequential and cumulative is built into the State’s performance, knowledge, and curriculum standards. *See Overview of Knowledge Standards*, available at <http://dese.mo.gov/standards/content.html> (reflecting that “[e]ach grade level and each course sequence would build on the knowledge base acquired at a previous grade level or in a previous course”).

Moreover, the Curriculum Frameworks for each grade level build on skills and knowledge assumed to be learned in the previous grade and become progressively more difficult as students progress through the grades. Children entering kindergarten are expected to master the kindergarten curriculum standards in preparation for first grade, where they master the first grade standards, and so on throughout the grades. *See e.g., Communication Arts Grade Level Expectations, available at [http://dese.mo.gov/divimprove/curriculum/GLE/documents/-ca\\_gle\\_k8\\_1004.doc](http://dese.mo.gov/divimprove/curriculum/GLE/documents/-ca_gle_k8_1004.doc) (providing that kindergarten students are expected to “read text containing a small bank of high frequency words;” by first grade, students are expected to “read grade level instructional text”).*

Children who, due to poverty, enter kindergarten without the basic vocabulary, literacy, and social skills possessed by their more advantaged peers will be at a disadvantage to master Missouri’s kindergarten curriculum standards. They will then face difficulty progressing to first grade, where they will again experience obstacles in meeting the curriculum standards, and so on as they continue to age through the education system. The State’s knowledge, performance and curriculum standards recognize that learning is sequential, but by not funding a high quality pre-kindergarten program for all low-income children, the State fails to provide these children the opportunity to begin school with the building blocks essential to achieve those standards, and sets them up for progressive and cumulative failure.

Importantly, DESE has acknowledged that young children must begin school with a foundation of skills and knowledge if they are to attain a constitutionally adequate education. It has promulgated the Missouri Early Childhood Standards, *available at* [http://dese.mo.gov/divimprove/fedprog/earlychild/PreK\\_Standards/-Index.html](http://dese.mo.gov/divimprove/fedprog/earlychild/PreK_Standards/-Index.html), which contain early learning standards in the areas of literacy, math, physical development, health and safety, science, and social and emotional development. DESE recognized that the standards were essential to ensuring all children enter school prepared to succeed:

[The Knowledge] Standards are designed for students in kindergarten through grade 12 and serve to ensure that graduates of Missouri's public schools have the knowledge, skills, and competencies to lead productive, fulfilling, and successful lives. However, we realize that the foundations for learning are laid well before a child enters kindergarten[.] ... [R]esearch tells us that the pre-kindergarten years provide crucial opportunities for educators and caregivers to influence children's growth and development. If our goal is that every child enter kindergarten ready to learn and succeed, pre-kindergarten educational standards can provide us with the shared understandings about the competencies critical for this to occur. In addition, pre-kindergarten standards provide a direct link to the [Knowledge] Standards, so we know we are preparing children for the high expectations they will encounter as they progress through school.

Early Literacy Teacher's Guide 4, available at [http://dese.mo.gov/divimprove/fedprog/earlychild/PreK\\_Standards/Literacy\\_Teacher.pdf](http://dese.mo.gov/divimprove/fedprog/earlychild/PreK_Standards/Literacy_Teacher.pdf). Without a state funded, high quality pre-kindergarten program for low-income children, however, DESE's goal that all children start school ready to learn and succeed is nothing more than a hope, and certainly not the opportunity to a constitutionally adequate education in Missouri.

**b. The trial testimony of Missouri educators supports the inclusion of prekindergarten for low-income children in a constitutionally adequate system of education**

The trial record in this case makes clear that the General Assembly has shirked its constitutional duty by failing to provide high-quality pre-kindergarten programs for all low-income children. The record provided uncontroverted testimony by numerous experienced and dedicated educators establishing that an adequate education is unattainable for low-income children without the opportunity to participate in high-quality early learning programs designed to mitigate the cognitive gaps caused by childhood poverty. These same witnesses testified that many low-income children do have not access to such programs because there is no state funding to support them.

For example, Dr. Diana Bourisaw, the superintendent of the City of St. Louis School District and an educator with thirty years experience, testified that, "in any high poverty situation, pre-school is *imperative*." Tr. 5581-17 (2/7/2007,

vol. 22)(emphasis supplied). Dr. Bourisaw explained the research demonstrating that high quality pre-kindergarten is essential to remedy the impact of poverty on young children's ability to learn to read. She described studies showing that children in middle-income families enter school with 1,800 pre-literacy hours, which are hours spent on activities that lay the foundation for literacy, as compared to children in low-income families, who typically have only 200 pre-literacy hours. Tr. 5560-15 to 1561-14 (2/7/200, vol. 22). Thirty-eight percent (38%) of children under the age of six in the City of St. Louis School District live in poverty, compared to the State average of 17.7 %, and three out of ten of the District's students are homeless in the course of a given year. Tr. 5559-24 to 5560-7; Tr. 5564-9 (2/7/200, vol. 22). Dr. Bourisaw testified that 3,000 low-income children are eligible for the District's pre-kindergarten program, but the District serves only 1,285 children due to insufficient resources. Tr. 5561-20 (2/7/200, vol. 22).

Dr. Phyllis Chase, the superintendent of the City of Columbia School District until August 2008, testified about the findings of the District's Early Childhood Education Task Force, which was established based on the District's Achievement Gap Task Force's study and recommendations. Tr. 1485-16 (1/16/2007, vol. 8). The Early Childhood Education Task Force reviewed the research on brain development and knowledge acquisition, concluded that the provision of pre-kindergarten would help prepare children to succeed in school, and recommended that four- and three-year-olds have access to full-day pre-

kindergarten programs. Tr. 1486-1; Tr. 1489-1 to 1490-13 (1/16/2007, vol. 8). About a quarter to a third of the District's preschoolers would qualify for the program recommended by the Task Force, but the District is able to serve only 350 children who either qualify for special education funding or are eligible for Title 1 services. Tr. 1489-17 to 1490-2. (1/16/2007, vol. 8). The District receives no other public funding for pre-kindergarten programs and maintains a waiting list for Title 1 eligible children. Tr. 1491-7; Tr. 1504-22 (1/16/2007, vol. 8).

Dr. Don Hamby, who served as superintendent of the Willow Springs School District for twelve years before retiring in 2007, testified that the District's Title 1 pre-kindergarten program is able to serve only a limited number of eligible children, forcing the District to maintain a waiting list. Tr. 2037-25 to 2038-10 (1/18/2007, vol. 10). He explained that the District was ineligible to receive a Missouri Preschool Program grant to serve more children because it lacked the required facilities. *See infra* Part II(b). Dr. Hamby stated, "if we were providing an education, [the pre-kindergarten program] would be available to everyone." Tr. 2038-4 (1/18/2007, vol. 10).

Dr. Robert Bartman, the Missouri Commissioner of Education from 1987 to 2000, cited his experience at DESE to testify that high quality pre-kindergarten programs are necessary for low-income children because they help improve children's vocabulary before they start school and close performance gaps that persist into later grades. Tr. 1006-13 (1/09/2007, vol. 5).

**c. State policy enactments acknowledge the necessity of publicly funded pre-kindergarten for economically disadvantaged children**

The General Assembly's own legislative determinations make clear that Missouri's economically disadvantaged children require the opportunity to participate in pre-kindergarten programs to achieve an adequate education. In 1998, the General Assembly established the Early Childhood Development, Education and Care Fund ("Fund") to, among other things, "support programs that prepare children prior to the age in which they are eligible to enroll in kindergarten ... to enter school ready to learn." Section 313.835.1(3)(d) RSMo. Children in low-income families are given preference for allocations from the Fund. Sections 313.835.1(3)(e)(a)(ii), (3)(e)(c)(5), (3)(f), (3)(g), (3)(h), RSMo. The Fund supports the Missouri Preschool Project ("MPP"), the State's existing, DESE-administered pre-kindergarten program. Unfortunately, MPP serves only 4% of Missouri's four-year-olds and 2% of three-year-olds, ranking Missouri 32 out of the 38 states that fund a pre-kindergarten program for four-year-olds. The State of Preschool 84; Tr. 1620-4 to 1621-2 (vol. 8, 1/16/2007). MPP per pupil funding also ranks at the bottom nationally, with per pupil funding decreasing by more than \$500 since 2002. *Id.*

The General Assembly also established the Missouri Coordinating Board for Early Childhood ("Coordinating Board") to "develop a comprehensive statewide long-range strategic plan for a cohesive early childhood system."

Section 210.102.1(2), RSMo. In 2008, the Coordinating Board convened the Missouri Panel on School Readiness: Focus on Pre-Kindergarten Education (“School Readiness Panel”), a “high-level statewide panel to inform efforts to develop a system of high quality, publicly funded pre-kindergarten.” School Readiness Panel Final Report 1, available at <http://www.moccrn.org/>. The School Readiness Panel identified its purpose as “ensur[ing] that Missouri’s children have access to high-quality pre-kindergarten learning experiences that prepare them to succeed in school and life.” *Id.* at 3. The School Readiness Panel issued a series of recommendations, including that the General Assembly establish by 2011 a publicly funded, high quality, voluntary pre-kindergarten program that ensures enrollment is accessible and affordable to all age-eligible children. *Id.* at 4-6.

Moreover, the people of Missouri amended art. IX, § 1(a) in 1976 to delete language that limited the right to a public education to persons “within ages six and twenty-one.” Mo. Const. art. IX, §1(a) (amended 1976). The education article now guarantees a public education to “all persons in [the] state within ages not in excess of twenty-one years.” Mo. Const. art. IX, §1(a). Thus, Missouri citizens have affirmed that the system of public education required by the Constitution may include pre-kindergarten if necessary to provide an adequate education.

**d. National early childhood policy recognizes that high quality pre-kindergarten for low-income children is an essential component of an adequate education**

The early childhood policy enactments of the General Assembly, the School Readiness Panel, and the citizens of Missouri are part of a national consensus among most states' policymakers and the nation's leading educators that pre-kindergarten for disadvantaged children is an indispensable component of an adequate public education system. *See, e.g.,* The State Of Preschool 10 (reporting that thirty-eight states and the District of Columbia fund a pre-kindergarten program). In the 2006-07 school year, more than a million children were served nationwide in state pre-kindergarten programs, an increase of 80,000 from the 2005-06 school year. *Id.* Despite severe budget constraints in most states, state spending on pre-kindergarten increased by 14% during this time period. *Id.* at 13.

The nation's top education organizations strongly support expanding publicly funded pre-kindergarten. *See, e.g.,* Michael Resnick, The Time Has Come for Voluntary Pre-K for All, Sch. Bd. News, Dec. 26, 2006, at 2 (National School Board Association editorial stating that voluntary pre-kindergarten opportunities for all three- and four-year-olds is "essential for our national commitment to individual opportunity and our country's global success."), *available at* <http://www.nsba.org/HPC/Features/SBN/SbnArchive/2006/Decem->

ber2006/NSBAEditorialThetimehascomeforvoluntarypreKforall.aspx; Nat'l Ass'n of Elementary Sch. Principals, Leading Early Childhood Learning Communities: What Principals Should Know and Be Able to Do 7 (2005) (urging principals to advocate for free universal pre-kindergarten programs staffed with qualified, certified, and well-paid early childhood teachers and specialists), *available at* [http://web.naesp.org/misc/ECLC\\_ExecSum.pdf](http://web.naesp.org/misc/ECLC_ExecSum.pdf); Council of Chief State School Officers, Building a Cadre of Champions, [http://www.ccsso.org/projects/Early-Childhood\\_and\\_Family\\_Education/Projects/2973.cfm](http://www.ccsso.org/projects/Early-Childhood_and_Family_Education/Projects/2973.cfm) (explaining CCSSO's plan to educate chief school officers to advocate for voluntary, universal pre-kindergarten for all three- and four-year-olds); Nat'l Educ. Ass'n, NEA on Prekindergarten and Kindergarten 6 (2004) (advocating for voluntary, publicly funded, high-quality universal pre-kindergarten programs for all three and four-year-old children whose parents choose to enroll them), *available at* <http://www.nea.org/earlychildhood/images/prekkinder.pdf>; American Fed. of Teachers, Where We Stand: Early Childhood Education 11 (2003) (supporting high-quality early childhood programs that are accessible to all children beginning at age three, free for low-income children, and affordable to all), *available at* <http://www.aft.org/pubs-reports/downloads/teachers/EarlyChildRes.pdf>.

Early childhood research supports the national consensus on the absolute educational necessity of high-quality pre-kindergarten programs for low-income children. *See infra*, Part III; *see also* Tr. 1604 to 1615 (vol. 8, 1/16/2007)

(testimony of early childhood expert Dr. Kathy Thornburg summarizing research findings). The scope of a constitutionally adequate education system will necessarily evolve over time, depending on scientific research, development of educational best practices, and social context. See *Committee for Educational Equality, et al. v. State of Missouri, et al.*, Case No.s CV190—1371CC and CV190-510CC, Cole County Circuit Court (1993), at 33 (finding that “the General Assembly must provide adequate funds to establish and maintain a system of public education at the elementary and secondary level providing a general diffusion of knowledge and intelligence *at the level necessary in this era* to preserve the rights and liberties of the people”) [emphasis supplied]; *accord Moseley v. Welch*, 209 S.C. 19, 39 S.E.2d 133, 140-141 (1946) (“The development of our school system in South Carolina has demonstrated the wisdom of the framers of the Constitution in leaving the General Assembly free to meet changing conditions.”); *Montoy v. State*, 102 P.3d 1160, 1163 (Kan. 2005) (noting that the definition of a “suitable” education under the Kansas Constitution “is not stagnant but requires constant monitoring,” and accepting the trial court’s “findings regarding the various statutory and societal changes which occurred after [the court’s earlier decision]”); *McDuffy v. Secretary*, 615 N.E.2d 516, 555 (Mass. 1993) (“The content of the duty to educate which the Constitution places on the Commonwealth necessarily will evolve together with our society.”); *Abbott v. Burke*, 575 A.2d 359, 367 (N.J. 1990) (“[W]hat a thorough and efficient education consists of is a continually changing concept.”); *Robinson v. Cahill*, 355 A.2d 129,

133 (N.J. 1976) (finding “a perceptive recognition” on the part of the legislature of the “constantly evolving” nature of education, and noting that “what seems sufficient today may be proved inadequate tomorrow”); *Seattle Sch. Dist. No. 1 v. State*, 585 P.2d 71, 94 (Wash. 1978) (finding that the education clause must be interpreted “in accordance with the demands of modern society or it will be in constant danger of becoming atrophied and, in fact, may even lose its original meaning”); *Campbell County Sch. Dist. v. State*, 907 P.2d 1238, 1279 (Wyo. 1995) (“The definition of a proper education is not static and necessarily will change.”).

The State’s educational standards and policy enactments, the trial evidence, and national early childhood research establish that the concept of an adequate education under the Missouri Constitution has evolved to include an opportunity for low-income children to participate in high-quality pre-kindergarten programs. It is time for the General Assembly to live up to its constitutional responsibility by adopting and adequately funding such programs. *Accord Abbott v. Burke*, 710 A.2d 450, 463-64, 473 (N.J. 1998) (directing the legislature to offer a high-quality pre-kindergarten program to all three- and four-year-old children residing in the state’s lowest-income school districts as a part of its duty under the New Jersey Constitution, Article 8, section 4, to provide a “thorough and efficient” education for all children, because such program is essential to overcoming the effects of poverty on educational achievement); *Hoke County Bd. of Educ. v. State*, 599

S.E.2d 365, 373, 395 (N.C. 2004) (imposing a legislative duty to prepare at-risk pre-kindergarten children to avail themselves of the opportunity for the “sound basic education” required by the North Carolina Constitution, Article 9, section 2).

**III. Many of the State’s Young Children are Low-Income; are at Risk of School Failure; and Require High-Quality Pre-Kindergarten Programs for the Opportunity to Avail Themselves of a Constitutionally Adequate Education**

**a. Young low-income children are at great risk of school failure before they even enter kindergarten**

The link between childhood poverty and higher rates of academic failure, grade retention, and school dropout is well documented in research. *E.g.*, Elizabeth P. Pungello, Frances Campbell & W. Steven Barnett, Poverty and Early Childhood Intervention, Ctr. on Poverty, Work and Opportunity Policy Brief Series 2 (2006) (summarizing research findings on poverty’s negative effects on school performance), *available at* <http://www.law.unc.edu/documents/poverty/-publications/pungelloandcampbellpolicybrief.pdf>; *see also* Tr. 1609-22 (1/16/2007, vol. 8) (early childhood expert Dr. Kathy Thornburg stating that low-income children and children of color are at the greatest risk for school failure).

This devastating correlation is especially significant for the Missouri public education system, where 42% of students are low-income. *See* DESE Annual Reporting of School District Data (2008), *available at* <http://dese.mo.gov/>

schooldata/school\_data.html (reporting that 42.1% of Missouri students were eligible for the federal free and reduced lunch program in 2008, i.e., family income at or below 185% of the Federal Poverty Level).<sup>3</sup> The situation is even more dire in many of the plaintiff school districts, where the percentage of students eligible for the free and reduced lunch program is significantly higher. *See, e.g.*, St. Louis City (71.9%); Caruthersville 18 (70.6%); East Carter Co. R-II (67.4%); Eminence R-I (63.1%); Van Buren R-I (60.6%); Willow Springs R-IV (58%); East Newton Co. R-VI (57.8%); Diamond R-IV (52.9%); and Crawford Co. R-I (52.7%). *Id.*

Data show that poverty and minority status are highly correlated, both nationwide and in Missouri, making it more likely that Black and Latino children will fail in school. In 2006, 33% of Black children under age eighteen nationwide lived in households with income below the federal poverty level, compared to only 10% of White children. *See, e.g.*, C. Denavas-Walt, B.D. Proctor & C.H. Lee, Income, Poverty, and Health Insurance Coverage in the United States, US Census Bureau, Current Population Report: Consumer Income, 52-53 (2006). Black children are also more likely than White children to experience long-term poverty.

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<sup>3</sup> The federal poverty guidelines are issued annually by the U.S. Dept. of Health and Human Services. For 2008, the federal poverty level is \$21,200 for a family of four. The 2008 HHS Poverty Guidelines, available at <http://aspe.hhs.gov/poverty/08poverty.shtml>.

*See, e.g.,* Mary E. Corcoran & Ajay Chaudry, The Dynamics of Childhood Poverty, *The Future of Children*, Summer/Fall 1997, at 45-47, *available at* [http://www.futureofchildren.org/usr\\_doc/vol7no2ART3.pdf](http://www.futureofchildren.org/usr_doc/vol7no2ART3.pdf).

The National Center for Children in Poverty reports that in Missouri, 44% of Black children live in families with incomes at or below the federal poverty level; 72% percent live in families with incomes at or below 200% of the federal poverty level.<sup>4</sup> Thirty-eight percent (38%) of Latino children in Missouri live at or below the federal poverty level; 56% live in families with incomes at or below 200% of federal poverty.

Missouri's youngest children are the most severely impacted by poverty. According to the National Center for Children in Poverty, 23% of Missouri children under the age of six live in families with incomes at or below the federal poverty level; an additional 20% live in families with incomes between 100% and 200% of the poverty level. Seventy-five percent of young Black children live in families with incomes at or below 200% of the federal poverty level, compared to 36% of young White children. *See* Nat'l Ctr. for Children in Poverty, *supra*, n. 4.

Not surprisingly, there are significant correlations between socioeconomic status (SES), race and ethnicity and children's cognitive skills *before they enter kindergarten*. Valerie E. Lee & David T. Burkam, Inequality at the Starting Gate: Social Background Differences in Achievement as Children Begin School 2, 17-

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<sup>4</sup> Nat'l Ctr. for Children in Poverty, State Profiles, <http://www.nccp.org/profiles>.

22 (2002) (citing data from the Early Childhood Longitudinal Study, Kindergarten Cohort, a nationally representative sample of nearly 23,000 kindergarten children, to show differences in cognitive development at entry to kindergarten between economically disadvantaged children and their wealthier peers and by racial and ethnic groups); *see also* Tr. 1604-24 to 1605-13 (1/16/2007, vol. 8) (early childhood expert Dr. Kathy Thornburg stating that many low-income children and children of color lack school readiness skills).

The foundation for learning and academic achievement is laid before children enter kindergarten. *See* [From Neurons to Neighborhoods: The Science of Early Childhood Development](#) (Jack P. Shonkoff & Deborah A. Phillips eds., 2001), *available at* <http://books.nap.edu/openbook.php?isbn=0309069882>; [How People Learn: Brain, Mind, Experience, and School](#) (John D. Bransford, Ann L. Brown & Rodney R. Cocking, eds., 2000), *available at* <http://www.nap.edu/html/howpeople1>; [Eager To Learn: Educating Our Preschoolers](#) (Barbara T. Bowman, M. Suzanne Donovan & M. Susan Burns, eds., 2001), *available at* <http://www.nap.edu/openbook.php?isbn=0309068363>. A variety of socio-economic factors affects this early development and puts many children at risk for school failure before they even begin kindergarten. For example, studies show that children of less well-educated parents, parents who receive welfare benefits, and single parents, are far less likely to be read to and told stories and have fewer books in their homes than their peers with more affluent, better educated parents.

*See, e.g.,* Lee & Burkam, *supra*, at 36-44; *see also*, Tr. 5560-15 to 1561-14 (2/7/2007, vol. 22) (testimony of Dr. Diana Bourisaw, Superintendent of City of St. Louis School District, summarizing research showing that low-income children enter school with 1600 fewer hours of exposure to pre-literacy skills than their more advantaged peers). Cognitive development for these children may be stymied, and the acquisition of early language, math, and reasoning skills may be limited. Lee & Burkam, *supra*, at 36-44. Consequently, at the point they enter school, many children from disadvantaged backgrounds are far behind and ill-equipped to succeed along with their more advantaged peers. *Id.* at 2, 17-22, 57-61.

Even more disturbing is that unless gaps in children's skills and knowledge are addressed before kindergarten entry, children not only start school behind but also remain behind, and the gap between them and their more advantaged peers widens over time. Haskins & Rouse, *supra*, at 2 (citing studies showing that "children who score poorly on tests of intellectual skills during the preschool years do less well in elementary and high school and are more likely to become teen parents, engage in criminal activities, suffer from unemployment, and become clinically depressed as adults"); Meredith Phillips, James Crouse & John Ralph, Does the Black-White Test Score Gap Widen After Children Enter School?, *The Black-White Test Score Gap* 229, 232, 248 (Christopher Jencks & Meredith Phillips eds., 1998) (showing that half the gap between Blacks and Whites at high

school exit is attributable to the gap at school entry); From Neurons to Neighborhoods, *supra*, at 5 (finding that the “striking disparities” with which children begin kindergarten “are predictive of subsequent academic performance”).

In summary, a sizeable percentage of students in Missouri’s public schools are low-income, and many live in poverty. Many school districts experience extreme concentrations of poverty – in some of the plaintiff districts, the majority of children live in low-income families. These are the children at the greatest risk for poor academic performance, grade retention, and school dropout, i.e., failure. From the outset, many young children, particularly low-income children, do not have an equal opportunity to the adequate education guaranteed by the Missouri Constitution. They enter school without the basic experiences and cognitive skills needed to learn to read and write and attain the other educational foundations necessary for the opportunity to succeed in our public education system. Without adequate early intervention measures, they are highly likely to experience academic failure.

**b. High-quality pre-kindergarten programs help young children overcome poverty’s effects on learning and succeed in school**

Fortunately, as numerous witnesses testified, high-quality pre-kindergarten programs help reverse early learning gaps by providing low-income children with the school readiness skills they need to succeed. *See generally*, W. Steven Barnett

& Clive R. Belfield, Early Childhood Development and Social Mobility, *The Future of Children* 73, 80-86, Fall 2006, *available at* [http://www.futureof-children.org/ usr\\_doc/05\\_5563\\_barnett-belfield.pdf](http://www.futureof-children.org/usr_doc/05_5563_barnett-belfield.pdf) (summarizing the research on short- and long-term effects of early childhood programs on child development and adult outcomes); *see also*, Tr. 1006-13 (1/09/2007, vol. 5) (Dr. Robert Bartman, former Missouri Commissioner of Education, testifying that high quality pre-kindergarten programs help improve low-income children's vocabulary before they start school and close performance gaps that can persist into later grades); Tr. 1604-24 to 1609-13 (1/16/2007, vol. 8) (early childhood expert Dr. Kathy Thornburg stating that high quality pre-kindergarten helps close cognitive gaps before children enter kindergarten); Tr. 5683-21 (2/7/2007, vol. 22) (Dr. Diana Bourisaw, Superintendent of City of St. Louis School District, testifying that early childhood education helps close pre-literacy gaps for low-income preschoolers); Tr. 1486-1 (1/16/2007, vol. 8) (Dr. Phyllis Chase, Superintendent of City of Columbia School District testifying that the District's Early Childhood Education Task Force found participation in high quality early childhood education improved children's academic success).

## **1. The National Research**

High-quality pre-kindergarten programs can diminish the impact of poverty on education by improving children's language, cognitive, and social development. Barnett & Belfield, *supra*, at 80-86. Three prominent longitudinal

studies of children who attended high-quality early childhood programs—Carolina Abecedarian Project, Chicago Parent Child Program, and High/Scope Perry Preschool Program—demonstrated dramatic effects in academic achievement. Participants in the Carolina Abecedarian Project, a year-round, full-day early education program for low-income children, achieved much higher IQ and achievement test scores through age 21 than non-participants. They were also significantly less likely than the control group to have repeated a grade or been placed in special education and more likely to graduate from high school and attend a four-year-college. W. Steven Barnett & Leonard Masse, Comparative Benefit-Cost Analysis Of The Abecedarian Program And Its Policy Implications, *Economics of Educ. Rev.*, Feb. 2007, at 113, 116.

Low-income children enrolled in the Chicago Parent Child Project, a pre-kindergarten and kindergarten program in the Chicago Public Schools that emphasized parental involvement and early literacy skills, demonstrated higher cognitive skills and greater school achievement than those who had not attended the program. Arthur J. Reynolds, et al., Age 21 Cost-Benefit Analysis of the Title I Chicago Child-Parent Centers, *Educ. Evaluation & Policy Analysis*, Winter 2002, at 267, 268, *available at* <http://www/irp.wisc.edu/publications/-dps/pdfs/dp124502.pdf>. Preschool participation at ages three and four was associated with significantly higher rates of school completion, lower rates of special education services and grade retention, and lower rates of involvement in

the juvenile justice system. *Id.* at 268-69. And economically disadvantaged three- and four-year-olds who received two and one-half hours of daily classroom instruction by state-certified teachers in the High/Scope Perry Preschool Program significantly outperformed the non-program group on various intellectual, language, literacy, and achievement tests throughout their school years. Lawrence J. Schweinhart, Lifetime Effects: The High/Scope Perry Preschool Study Through Age 40 60-64 (2005) (A summary of research findings is available at [http://www.highscope.org/file/Research/PerryProject/3\\_specialsummary%20col%2006%2007.pdf](http://www.highscope.org/file/Research/PerryProject/3_specialsummary%20col%2006%2007.pdf)). They were also less likely to be placed in special education and more than twice as likely to graduate from high school as a similar group of children who did not participate in the program. *Id.* at 51-58.

## **2. Research on State Pre-Kindergarten Programs**

Recent studies of state-funded pre-kindergarten programs provide additional evidence of high-quality pre-kindergarten's effectiveness in preparing children for academic success. For example, a study of Oklahoma's universal pre-kindergarten program showed that the program had considerable impact on three subsets of a standardized, nationally normed achievement tests that measure pre-reading, pre-writing, and pre-numeracy skills. William T. Gormley, Jr., et al., The Effects of Universal Pre-K on Cognitive Development, 41 *Developmental Psych.* 872, 880-82 (2005), *available at* <http://www.psych.umn.edu/courses/fall05/-mcguem/psy8935/readings/gormley2005.pdf>. Each of four racial and ethnic

groups—Hispanic, Black, White, and American Indian children—made significant gains in school readiness skills, as did both children who were eligible for the federal lunch program and those who were not, although the greatest benefits were evidenced by low-income and limited-English children. *Id.*

Similar patterns were found in a five-state study of state pre-kindergarten programs in Michigan, New Jersey, Oklahoma, South Carolina, and West Virginia. Statistically significant effects were reported for children’s print awareness, vocabulary development and early math skills. W. Steven Barnett, et al., The Effects of State Prekindergarten Programs on Children’s School Readiness in Five States (2005), *available at* <http://nieer.org/resources/research/multistate/-fullreport.pdf>. The study found the state funded pre-kindergarten programs “to have statistically significant and meaningful impacts on children’s early language, literacy and mathematical development, with some evidence of an enhanced program effect for print awareness skills for children in low-income families.” *Id.* at 2. *See also* Southern Reg’l Educ. Bd., Ready to Start: Ensuring High-Quality Prekindergarten in SREB States 3 (2007) (summarizing research findings on state pre-kindergarten programs in the southern states), *available at* [http://www.sreb.org/main/Goals/Publications/07E09\\_Ready\\_to\\_Start.pdf](http://www.sreb.org/main/Goals/Publications/07E09_Ready_to_Start.pdf).

### **3. Research on Adult Outcomes**

Research also shows that a child’s participation in high-quality pre-kindergarten provides at-risk children an opportunity to achieve long-term success in life. Participants are more likely to have higher earnings, own their home, and

marry, and less likely to be involved in the criminal justice and welfare systems, have children by age 21, and smoke. Barnett & Maase, *supra*, at 117-120; Schweinhart, *supra*, at 74-85; Reynolds, et. al, *supra*, at 276-77. When added to the benefits accrued during the school years—lower incidences of grade retention, school dropout rates, and placement in special education and remedial services—many economists have concluded that high-quality pre-kindergarten is also a smart public investment. *See, e.g.*, Art Rolnick & Robert Grunewald, Early Childhood Development: Economic Development with a High Public Return, fedgazette, March 2003 (finding that investment in early childhood programs results in better public schools, more educated workers and less crime, resulting in an “extraordinary” return on investment), *available at* <http://woodrow.mpls.frb.-fed.us/pubs/fedgaz/03-03/earlychild.cfm>.

### **CONCLUSION**

As shown in this Brief, educational adequacy must begin with high-quality pre-kindergarten programs for low-income children. The General Assembly’s failure to fund effective early education programs for low-income children renders it necessary for this Court to protect the educational rights of these children. *Amici curiae* urge this Court to find that the Missouri Constitution requires the General Assembly to offer economically disadvantaged pre-kindergarteners the opportunity to participate in high-quality early learning programs that will enable them to have an adequate public education.

Respectfully submitted,

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Ellen M. Boylan, Esquire  
Education Law Center  
60 Park Place, Suite 300  
Newark, NJ 07102  
*Admitted pro hac vice*

Attorneys for *Amici Curiae*  
Citizens for Missouri's Children and  
Missouri Child Care Resource and  
Referral Network

## CERTIFICATE OF COMPLIANCE

COMES NOW counsel for Amici Curiae, and for their Certificate of Compliance, states as follows:

1. The undersigned does hereby certify that *Amici's Curiae* Brief of Citizens for Missouri's Children and Missouri Child Care Resource And Referral Network In Support of Appellants-Respondents filed herein complies with the page limits of Rule 84.06(b) and contains **7,894** words of proportional type.
2. Microsoft Word was used to prepare Amici Curiae Brief of Citizens For Missouri's Children and Missouri Child Care Resource And Referral Network in Support of Appellants-Respondents.
3. The undersigned does hereby certify that the CD provided with this Motion and Brief has been scanned for viruses and is virus-free.

**CERTIFICATE OF SERVICE**

I hereby certify that I served two copies of the foregoing document (plus disc) by mailing a true copy thereof on this 26th day of January, 2009, via prepaid U.S. Mail, to:

**Alex Bartlett – Attorney for Appellants Committee For Educational Equality, et al.**

Husch Blackwell Sanders, LLP  
Monroe House, Suite 200  
235 East High Street, P.O. Box 1251  
Jefferson City, MO 65102

**Kenneth C. Brostron- Attorney for Appellants Board of Education For the City of St. Louis**

Lashly & Baer, P.C.  
714 Locust Street  
St. Louis, MO 63101

**Audrey Hanson McIntosh**

Audrey Hanson McIntosh  
P.O. Box 1497  
Jefferson City, MO 65102

**James C. Owen – Attorneys for Appellants Coalition To Fund Excellent Schools**

McCarthy, Leonard, Kammerer, Owen, McGovern, Striler & Menghini, LC  
400 S. Woods Mill Road, Suite 250  
Chesterfield, MO 63017

**Richard B. Walsh, Jr. – Attorney For Appellant Special Administrative Board of the Transitioned School District of the City of St. Louis**

Lewis, Rice & Fingersh  
500 North Broadway, Suite 2000  
St. Louis, MO 63102

**Christopher J. Quinn**

Assistant Attorney General  
Office of the Missouri Attorney General  
Old Post Office Building  
815 Olive Street, Suite 200  
St. Louis, MO 63101

**Joshua M. Schindler**  
Schindler & Mayer  
141 N. Meramec, Suite 201  
St. Louis, MO 63105

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Rodney D. Gray