In the Supreme Court of the State of California

CAMPAIGN FOR QUALITY EDUCATION, et al., Plaintiffs and Appellants, **v.** **STATE OF CALIFORNIA, et al.,** Defendants and Respondents.	Case No. S234901
MAYA ROBLES-WONG, et al., Plaintiffs and Appellants, **v.** **STATE OF CALIFORNIA, et al.,** Defendants and Respondents, **CALIFORNIA TEACHERS ASSOCIATION,** Intervenor and Appellant.	

First Appellate District, Case Nos. A134423, A134424
Alameda County Superior Court, Case Nos. RG10524770, RG10515768
The Honorable Steven A. Brick, Judge

ANSWER TO PETITION FOR REVIEW

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INTRODUCTION

The Court of Appeal's decision in this case properly applies settled principles of constitutional interpretation and this Court's precedents in rejecting plaintiffs' claims. As the court correctly determined, article IX, sections 1 and 5 of the state Constitution do not authorize courts to command the Legislature to increase or reorganize education funding to meet some judicially-determined qualitative standard. There is no conflict in authority over the issues presented by the petition, and no unsettled issue concerning the meaning of sections 1 and 5 that requires resolution by this Court.

Existing provisions of California's Constitution already specify the minimum level of funding required for the support of the public schools. Indeed, the Constitution also limits the allocation of excess state revenues that may go to education. Inferring a duty to provide some other level of school funding based on the general provisions of sections 1 and 5 would conflict with these specific funding provisions, as the concurrence noted.

The Constitution leaves policymaking surrounding educational objectives, programs, and funding to the Legislature, and the Court of Appeal's decision respects the Legislature's constitutional role. The Legislature has demonstrated that it is actively engaged in supporting and enhancing the quality of our public schools in response to changing conditions, needs, and educational theories. Since plaintiffs filed their complaints, the Legislature has dramatically increased school spending and restructured the school finance system, providing for greater local control and directing more resources to the education of students with the greatest needs. Plaintiffs complain about a school finance system and funding levels that are no longer in place.

The decision below reflects thoughtful application of settled precedent and interpretive principles. There is no reason for further review.

STATEMENT OF THE CASE

Plaintiffs in these matters separately filed suit in 2010 against the State and Governor asserting that the State was violating alleged duties under article IX, sections 1 and 5 (sections 1 and 5), and other constitutional provisions, by allegedly failing to provide adequate funding for K-12 education.[1] (AA-I:1; AA-V:951.) Plaintiffs in each action also alleged violations of the equal protection clauses of the state Constitution and certain other grounds for relief not at issue here.

Plaintiffs' complaint in *Robles-Wong v. State* ("*Robles-Wong*") sought an order requiring the State to "design, fund and implement" a system of public school finance that is "demonstrably aligned" with the objectives of the State's "prescribed educational program." (AA-I:56.) The complaint in *Campaign for Quality Education v. State* ("*CQE*") similarly sought an order requiring the State to ensure that school districts "have sufficient funds to provide their students with a meaningful education." (AA-V:1075-1076.)

The court sustained defendants' demurrer to the *Robles-Wong* complaint, and a motion to dismiss the first amended complaint in *CQE*. (Opn. 3.) Plaintiffs were granted leave to amend only as to their equal

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[1] Article IX, section 1, provides, as adopted in the 1879 Constitution:

> A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement.

Section 5 of article IX, also unchanged since 1879, states:

> The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established.

protection claims, and in *CQE*, a taxpayer claim. (AA-II:469; AA-VII:1414.) Plaintiffs amended their complaints, adding the State Controller and Director of Finance as defendants in each case. (AA-III:537-594; AA-VII:1446-1514.)

Defendants demurred to the amended complaints, and the trial court sustained the demurrers, again granting plaintiffs leave to amend their equal protection claims. (AA-IV:867-883; AA-VIII:1725-1750.) Plaintiffs in each action declined to further amend those claims, and the court dismissed the actions. (Opn. 3.) Plaintiffs appealed.

The Court of Appeal affirmed the trial court's dismissals of plaintiffs' actions in an opinion authored by Justice Jenkins. Like the trial court, the Court of Appeal concluded that "[w]hen read singly or together, sections 1 and 5 of article IX evince no constitutional mandate to an education of a particular standard of achievement or impose on the Legislature an affirmative duty to provide for a particular level of education expenditures." (Opn. 17.) Rather, the court concluded, these provisions "leave the difficult and policy-laden questions associated with educational adequacy and funding to the legislative branch." (*Id.* at 2.) While the Court of Appeal agreed "with the general proposition, embodied in [plaintiffs'] arguments, that an education of 'some quality' accords with good public policy[,]" (*id.* at 8) it could find "no support" for construing sections 1 and 5 to include "implied constitutional rights to an education of 'some quality' for public school children or a minimum level of expenditures for education . . . ." (*Id.* 2.)

Justice Siggins joined Justice Jenkins' opinion but also wrote separately to add three observations regarding plaintiffs' claims. He noted first that the Constitution's minimum school funding guarantee and excess revenue provisions adopted through Propositions 98 and 111, and a school reserve fund added to the Constitution also by voter initiative in 2014,

conflict with plaintiffs' claims that "an implicit right to educational adequacy mandates some other minimum specific level of state support to the schools." (Concurrence 1-2.) Second, Justice Siggins observed that the Legislature has by statute established, and recently revised, a testing and assessment scheme for school and student performance, and posited that an action might arise under those statutes if large numbers of students cannot meet expected levels of achievement. (*Id.* at 2-3.) Finally, he noted that recent legislative measures changing the school finance system and increasing school funding demonstrate that "[s]tate policymakers are working on the problem," and reasoned that educational policy goals may be best served if the Legislature retains flexibility to determine what measures will best advance them. (*Id.* at 3.)

Justice Pollak dissented. In his view, article IX "implies the need to maintain public schools at some minimum level of competence[.]" (Dissent 5.)

WHY REVIEW SHOULD BE DENIED

I. THE COURT OF APPEAL PROPERLY APPLIED SETTLED PRINCIPLES OF CONSTITUTIONAL INTERPRETATION IN DECLINING TO INFER A QUALITATIVE EDUCATION STANDARD

A. The Court Properly Declined to Infer a Right to Judicial Oversight of Education Finance and Quality

A reviewing court's first and "paramount task" in construing any constitutional provision "is to ascertain the intent of those who enacted it by looking to the language of the constitutional text." (Opn. 5, internal quotations omitted, citing *Thompson v. Dept. of Corrections* (2001) 25 Cal.4th 117, 122.) Because the California Legislature may exercise all lawmaking powers that are not denied to it by the state Constitution, restrictions on legislative action, such as the judicially-managed funding obligations urged by plaintiffs, "are to be construed strictly." (Opn. 5,

internal quotations omitted, citing *Methodist Hosp. of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 691.) A court is not free to "insert or omit words to conform to a presumed intent that is not expressed." (Opn. 5, citing *Knight v. Superior Court* (*Schwarzenegger*) (2005) 128 Cal.App.4th 14, 23.) Rather, courts must "interpret the [sections] as they are written." (*Id.* at 5-6, internal quotations omitted.)

Examining the text of sections 1 and 5 with these principles in mind, the Court of Appeal recognized that there is "no explicit textual basis from which a constitutional right to a public school education of a particular quality may be discerned," and concluded that "well-established principles of constitutional construction" counsel against inferring the existence of any such right. (Opn. 10.) The court added that its interpretation of sections 1 and 5 flows not only from the language of article IX itself, but also "from a consideration of its purpose," as also mandated by familiar principles of constitutional construction. (*Id.* at 11, citing *Lungren v. Davis* (1991) 234 Cal.App.3d 806, 825.) Sections 1 and 5, as the court observed, declare "'great principles'" and are designed to "'direct the judgment and conscience of legislators in making laws,'" but do not mandate the Legislature to act in a particular manner in implementing those principles. (Opn. 11, citing *Ward v. Flood* (1874) 48 Cal. 36, 55.)

The Court of Appeal acknowledged that the opportunity for a public school education is recognized as a "fundamental right." (Opn. 6.) But the court noted also that responsibility for educational policymaking resides in the Legislature. As the court recognized, the state Constitution "'vests the Legislature with sweeping and comprehensive powers in relation to our public schools [citation], including broad discretion to determine the types of programs and services which further the purposes of education.'" (Opn. 7, quoting *Wilson v. State Bd. of Ed.* (1999) 75 Cal.App.4th 1125, 1134-1135 (*Wilson*).)

The Court of Appeal properly refused to read into article IX a constitutional cause of action that would allow (and require) courts to attempt to judge the adequacy of the State's measures to support educational quality, and to command the State to provide funding purportedly necessary to meet any judicially-established qualitative standard. (Opn. 17-18, Concurrence 1.)

This does not mean, of course, that the Legislature has not addressed school quality and funding. The Legislature in 2013 adopted the most sweeping overhaul of the school finance system in decades, the Local Control Funding Formula (LCFF), which addresses many of plaintiffs' complaints about the former system, allowing for greater local control of educational programs and resources; directing additional funding and other resources to English learners, low income students, and foster youth; and establishing a new school accountability framework tied, among other things, to the state academic content standards. (See Legislative Analyst's Office, *Updated: Overview of the Local Control Funding Formula*, at pp. 2-18 (Dec. 2013) http://www.lao.ca.gov/reports/2013/edu/lcff/lcff-072913.pdf (visited 6/17/16.) Plaintiffs' complaints and the dissent address a school finance system that no longer exists. (See Dissent at 17.)

Moreover, plaintiffs filed their complaints during the depths of the Great Recession, when state funding was at its nadir with respect not only to education, but all areas of government. The Legislature increased State General Fund spending on K-12 education by *42 percent* since plaintiffs filed their complaints, from $35.6 billion in 2009-10 to $50.5 billion for 2015-16. (See Governor's Budget: Enacted Budget Detail http://www.ebudget.ca.gov/2009-10-EN/Enacted/agencies.html (2009-10.) http://www.ebudget.ca.gov/2015-16/Enacted/agencies.html (2015-16) (visited 6/17/16).)

B. Plaintiffs' Claims of Error in the Court's Textual Analysis Are Unavailing

1. The Court of Appeal Considered All Terms Used in Sections 1 and 5

Plaintiffs contend that the Court of Appeal "ignored critical language" in sections 1 and 5. (Petn. 12-18.) But the court specifically acknowledged each of the terms plaintiffs contend it ignored. Plaintiffs' argument merely restates their disagreement with the *conclusions* reached by the court.

Plaintiffs first contend that the court ignored the mandatory nature of section 1 denoted by use of the term "shall." (Petn. 13.) And they assert that the Framers, in exhorting the Legislature to use "all suitable means" to accomplish the goals identified in section 1, could not have intended to give the Legislature "carte blanche to establish any education system, however minimal." (Petn. 13.) Contrary to plaintiffs' contention, the Court of Appeal explicitly recognized that section 1 imposes "a duty" on the Legislature to encourage the promotion of intellectual, scientific, moral, and agricultural improvement by "'all suitable means.'" (Opn. 9.) But the court appropriately noted that the provision is "general and aspirational," and does not identify how the Legislature must pursue these goals. (*Ibid.*) The court properly concluded that it was not "at liberty to infer the existence" of an "implicit right to educational adequacy," enforceable by the courts, in section 1, whether standing alone or in conjunction with section 5. (*Id.* at 10-11.)

Plaintiffs next contend that the court ignored the terms "provide for," "keep up," and "support," in section 5. (Petn. 14.) But again, the court acknowledged those terms and concluded that section 5 imposes a duty on the Legislature—though not the duty alleged by plaintiffs. (Opn. 9.) The court recognized that section 5 requires the Legislature to establish a "'system of common schools,' 'free,' and 'kept up and supported in each

district.'" (*Ibid.*) Plaintiffs' contention that the court concluded that "Section 5 imposes *no obligation* on the state to support the public school system" is unfounded. (Petn. 14, emphasis added.) Rather, the court concluded only that section 5 does not "'delineate or identify any specific outcome standards to be achieved" or "require the attainment of any standard of resulting educational quality,'" and therefore provides no "explicit textual basis from which a constitutional right to a public school education of a particular quality may be discerned." (Opn. 9-10, quoting *Bonner v. Daniels* (Ind. 2009) 907 N.E.2d 516, 521.)

2. The Court Construed Sections 1 and 5 Together, in Consideration of the Purpose of Article IX

Plaintiffs' next contention, that the court construed sections 1 and 5 only in "[i]solation," is similarly unfounded. (Petn. 14.) The court expressly considered the purpose of article IX but found no support for plaintiffs' claims, whether reading sections 1 or 5 "singly or together." (Opn. 17.) The court identified sections 1 and 5 as constitutional provisions of the sort that declare "'great principles'" and are intended to "'influence and direct the judgment and conscience of legislators in making laws, rather than to limit and control them, by directing what precise law they shall make.'" (Opn. 11, quoting *Ward v. Flood*, *supra*, 48 Cal. at p. 55.)

The Court of Appeal's recognition that section 5 does not create a duty to support a particular qualitative educational standard does not render the provision devoid of meaning, as the dissent suggests. (Dissent 4.) This Court has recognized that section 5 requires the maintenance of a uniform educational system (*Kennedy v. Miller* (1893) 97 Cal. 429, 432, 437; *Serrano v. Priest* (1971) 5 Cal.3d 584, 595 (*Serrano I*)); that all children be provided an opportunity to attend public school (*Piper v. Big Pine School Dist. of Inyo County* (1924) 193 Cal. 664); that education, and all its integral components, be provided free of charge (*Hartzell v. Connell* (1984)

35 Cal.3d 899, 905); and that support be maintained for "the cost and upkeep of the school itself and its physical facilities" (*Arcadia Unified School Dist. v. State Dept. of Ed.* (1992) 2 Cal.4th 251, 264, fn. 10). The Court of Appeal's decision holds only that sections 1 and 5 do not have the particular meaning that plaintiffs seek to ascribe to them.[2]

3. The Court Properly Considered the Separation of Powers in Interpreting Sections 1 and 5

Plaintiffs contend that their claims do not implicate the separation of powers, and that the Court of Appeal erred in relying upon concerns regarding respective roles of the courts and the Legislature in matters of educational policy in reaching its decision. (Petn. 17-18.) Not so.

Plaintiffs deny that they seek to direct the Legislature to take any particular course of action regarding the school finance system or funding levels, claiming that they "seek no more than the remedy approved in *Serrano v. Priest*, 18 Cal.3d 728 (1976) ("*Serrano II*"): a declaration . . . that the status quo fails to satisfy the constitution." (Petn. 17.) However, the Court of Appeal explicitly rejected this argument, noting that "[f]unctionally," plaintiffs' claim relating to funding "would require this court to impose its judgment over that of the Legislature in order to determine whether a particular policy benefits public education." (Opn. 16,

[2] Plaintiffs' similar assertion that the Court of Appeal's decision would permit the Legislature to set up a single school in each district "devoid of curricular resources" lacks merit. (Petn. 15.) As the court recognized, the "Proposition 98 guarantee" dictates the level of school funding required by the Constitution. (Opn. 15; Concurrence 1-2.) Thus, the court's interpretation of sections 1 and 5 has no impact on the constitutionally mandated level of school funding. Proposition 98 required the Legislature to allocate $61.1 billion for K-12 education in 2015-16, sufficient to provide curricular resources to the schools in each district. See Legislative Analyst's Office, *EdBudget Tables*, p. 13 (May 2016) http://www.lao.ca.gov/reports/2016/3468/EdBudget-052016.pdf (visited 6/17/16.)

internal quotations and citation omitted.) Thus, the court concluded, "unlike the *Serrano* decisions on which appellants rely," allowing plaintiffs' claim to proceed would "require the courts to intrude into the Legislature's appropriation powers." (*Id.* at 16-17.)

Plaintiffs' disavowal of any intent to direct the Legislature to take specific action is belied by their own complaints, which expressly seek injunctions requiring the Legislature to "design, fund, and implement" a new education finance system "demonstrably aligned" with the State's academic content standards, or to ensure that school districts receive more funding allegedly required by article IX. (AA-I:56; AA-V:1075-1076.) Indeed, the petition seeks determinations whether sections 1 and 5 require the State to "provide for" a school system meeting a particular qualitative standard, and "furnish" a level of "resources" purportedly necessary to support the cost of programs needed to implement the State's academic content standards. (Petn. 1; see also 8.) As Justice Siggins recognized in his concurring opinion, noting among other things plaintiffs' election to name state financial officers as parties but not the Superintendent of Public Instruction or the State Department of Education, "[t]here is no question that this case is largely about the adequacy of state financial support for California public schools." (Concurrence 1.) And, he concluded, article IX cannot be read to authorize courts "to command the state to fund schools at some qualitative level." (*Ibid.*)

The Court of Appeal appropriately considered the limits of judicial authority over education policy and appropriations in determining whether sections 1 and 5 may be interpreted as plaintiffs propose.[3]

[3] The experience in many other states whose high courts have inferred judicially-enforceable qualitative educational standards in their constitutions underscores the perils of intruding on state legislative

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II. THE COURT OF APPEAL'S DECISION IS CONSISTENT WITH THIS COURT'S PRECEDENT

Plaintiffs assert that the Court of Appeal's decision conflicts with this Court's precedent, citing general statements concerning the value and goals of education and this Court's determination that education is a fundamental interest. However, the Court of Appeal specifically considered and rejected plaintiffs' contention that this Court's decisions require a different result. Indeed, the Court of Appeal properly relied upon this Court's education precedents in reaching its decision. (See Opn. 6-7, 16.)

The Court of Appeal appropriately concluded that plaintiffs' claims are contradicted by this Court's statement that while the Constitution requires basic equality in educational opportunity, it does not mandate funding for education at any "'magic level'" purportedly necessary "'to produce either an adequate-quality educational program or a high-quality educational program.'" (Opn. 16, *Serrano v. Priest* (1977) 20 Cal.3d 25, 36, fn. 6 (*Serrano III*).) The Court of Appeal also noted this Court's conclusion in *Serrano I* that "article IX, section 5 makes no reference to school financing." (Opn. 16, quoting *Serrano I*, *supra*, 5 Cal.3d at p. 596.)

Plaintiffs' response that these statements were made in the context of the equal protection claims at issue at trial in *Serrano* ignores that the Court in *Serrano I* already had determined that section 5 cannot be construed to govern school funding. (See Petn. 20.) Thus, the Court's statement that the Constitution did not require school funding at any "magic level" did not

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functions. As even the dissent recognizes, "the experience in some states where the courts have ordered relief has not been entirely positive," noting the constitutional crises, threats of school disruption, and "extended litigation" that have plagued states whose courts have declared a judicial role in determining the sufficiency of their state legislature's funding for the public schools. (See Dissent 19.)

leave open the door that section 5 could be construed to require funding to support an education meeting any particular qualitative standard.

This Court also has recognized that claims that "'seek[] to raise issues of the quality of education,'" and "'the academic results produced,'" preclude actions for educational injury because they raise "inherently subjective standards of duty and causation," as the Court of Appeal also noted in supporting its decision. (Opn. 13, quoting *Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1213 (*Wells*).) As this Court noted in *Wells*, in light of "'different and conflicting theories' about how children should be taught," and the fact that "educational success or failure 'is influenced by a host of factors,' both personal and external, 'which affect the pupil subjectively' and often are beyond the control of educators," there are no judicially manageable standards by which courts may adjudicate claims that a school or school system is failing to provide an adequate education. (*Wells*, *supra*, 39 Cal.4th at p. 1211, quoting *Peter W. v. San Francisco Unified School Dist.* (1976) 60 Cal.App.3d 814, 824.)[4]

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[4] Because academic performance is influenced by factors often beyond the control of educators, plaintiffs' reliance on standardized test results in support of their petition is misplaced. (See *Wells*, *supra*, 39 Cal.4th at p. 1213.) Educational quality "cannot be defined wholly in terms of performance on statewide achievement tests. . . ." (*Serrano II*, *supra*, 18 Cal.3d at p. 747.) Plaintiffs' "glass half empty" recitation of largely outdated student performance data, in any event, ignores significant improvements in academic performance and readiness. For example, the percent of eighth grade students scoring proficient or above on English language arts almost doubled—from 30 percent to 57 percent—from 2003 to 2013 when these state tests were discontinued. (See Legislative Analyst's Office, *The 2016-17 Budget: Proposition 98 Education Analysis*, p. 12 (Feb. 2016) http://www.lao.ca.gov/Reports/2016/3355/prop-98-analysis-021816.pdf (visited 6/17/16).) Student performance improved at similar rates in English language arts at other grade levels and on math exams. (*Ibid.*) The percentage of students completing coursework necessary for state university admission has steadily increased (*id.* at p. 14),

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Recognition of plaintiffs' claims necessarily would require the courts to adjudicate the "quality of education" and "the academic results produced," contrary to the principles endorsed by this Court in *Wells*.

Finally, as the Court of Appeal recognized, the fact that courts have deemed education a fundamental right for purposes of equal protection is not determinative of whether sections 1 and 5 mandate support for a public school system of a particular qualitative standard, as plaintiffs suggest. While this Court has recognized education as a fundamental right or interest for purposes of determining the proper level of scrutiny for claims alleging violation of equal protection, plaintiffs here elected not to appeal the dismissal of their equal protection claims. (See Opn. 4, fn. 3; *Serrano I, supra,* 5 Cal.3d at pp. 608-609*; Butt v. State* (1992) 4 Cal.4th 668, 683). And, as the Court of Appeal determined, regardless of education's status as a fundamental right, the text and purpose of sections 1 and 5 do not support, and separation-of-powers principles cut strongly against, plaintiffs' claims that those provisions create any judicially definable and enforceable standard of educational quality by which the courts may judge the sufficiency of the Legislature's appropriations for education.[5]

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and graduation rates have climbed for each of the past six years. (Dept. of Education, News Release #16-38 http://www.cde.ca.gov/nr/ne/yr16/yr16rel38.asp (visited 6/15/16).)

[5] Plaintiffs' contention that "no state supreme court has ever found its education clause to contain a substantive right to an education with no corresponding guarantee of quality," is incorrect. (Petn. 22, internal quotations and citation omitted.) The Supreme Court of Pennsylvania, for example, has recognized education as a "fundamental right," and "consistently examined problems related to schools in the context of that fundamental right." (*School Dist. of Wilkinsburg v. Wilkinsburg Education Assn.* (Pa. 1995) 667 A.2d 5, 9.) Yet, the court unanimously concluded that it could not adjudicate a claim that the state constitution's mandate that the General Assembly provide for "a thorough and efficient system of public

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The Court of Appeal's decision, finally, is consistent with this Court's long-established framework for determining whether constitutional provisions directly create enforceable rights or duties or instead require legislative action (which may in turn create enforceable statutory rights). (See, e.g., *People ex rel Beckwith v. Bd. of Ed. of Oakland* (1880) 55 Cal. 331, 334 [noting that Legislature's duties under article IX, sections 5, and parts of section 6, are not self-executing because "action by the Legislature may be necessary to give force and effect to the provisions"].) For example, in *Clausing v. San Francisco Unified School District* (1990) 221 Cal.App.3d 1224, the Court of Appeal held that "the inalienable right to attend campuses which are safe, secure and peaceful," guaranteed in the Declaration of Rights at article I, section 28, is not enforceable under those principles, notwithstanding that the right is "inalienable and mandatory," because "the specific means by which it is to be achieved for the people of California are left to the Legislature." (*Id.* at pp. 1237-1238; *see also Bautista v. State* (2011) 201 Cal.App.4th 716, 723-733 [holding that provisions authorizing creation of workers' compensation system that makes "adequate provisions" for worker safety did not create judicially enforceable rights to "adequate" safety standards].)

Here, the Court of Appeal appropriately concluded, consistent with precedent of this Court and other California courts, that sections 1 and 5 "do not impose on the Legislature duties that can be judicially enforced," and that plaintiffs' claims raise policy questions "'properly resolved . . . in the halls of the Legislature.'" (Opn. 17, 18, quoting *Grossmont Union High School Dist. v. State Dept. of Ed.* (2008) 169 Cal.App.4th 869, 892.) And,

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education" required funding and support of an "adequate" school system. (*Marrero ex rel. Tabalas v. Com.* (Pa. 1999) 739 A.2d 110, 113-114.)

as the Court of Appeal noted, the Legislature has through statutes such as those establishing a school performance accountability program, student performance and progress assessments, "addressed the quality of education to be afforded public school students." (Opn. 7.)

III. PETITIONERS' CLAIMS CONFLICT WITH THE EDUCATION FUNDING PROVISIONS OF ARTICLE XVI, SECTIONS 8 AND 8.5

The People in approving Propositions 98 and 111 "'established constitutional minimum funding levels for education and required the state to set aside a designated portion of the General Fund for public schools.'" (Opn. 15, quoting *Cal. Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 245; see Cal. Const., art. XVI, § 8.) Plaintiffs' claims cannot be squared with the consitutional provisions enacted under these ballot measures.

Passed in response to declining school funding in the wake of Proposition 13, voters expressly declared in approving Proposition 98 that the measure was intended to "enable Californians to once again have one of the best public schools systems in the nation." (AA-VI:1371 [§ 2(c)].) Plaintiffs' claim that sections 1 and 5 impose a qualitative requirement upon the public education system conflicts with the voters' understanding that by authorizing funding for public education at the level required by Proposition 98, they would be providing for an education system meeting a level of quality supported by the funding guarantee.

Additionally, plaintiffs' contentions that sections 1 and 5 also require some minimum level of school funding cannot be squared with the specific funding guarantees set out in article XVI, section 8, pursuant to Propositions 98 and 111. To the extent sections 1 and 5 could be read to impose any particular funding requirement, well-settled principles of constitutional interpretation dictate that the later-enacted and more specific guarantee set out in the Proposition 98 and 111 formulas of article XVI,

section 8, would necessarily prevail. (See *Serrano I, supra,* 5 Cal.3d at p. 596 [holding that section 5 should not be construed to apply to school financing as it would conflict with later-enacted and more specific provisions of article IX, section 6].)

But Propositions 98 and 111 established not only a minimum funding requirement in the Constitution, but also a Constititutional *limit* on excess state revenues that may go to the schools. (Cal. Const., art. XVI, § 8.5 subds. (a), (d).) Articles XIIIB, section 2, subdivision (a)(1), and article XVI section 8.5, also enacted under Proposition 98 and 111, require that one half of all state revenues above annual appropriations limits in two consecutive fiscal years be allocated to school districts and community colleges in proportion to enrollment, the other half to be "returned" to the People through tax or fee reductions, unless certain per student expenditure and class size targets already have been met (in which case the school allotment likewise would be returned to the People). As Justice Siggins noted in concurrence, these provisions, along with the state school reserve (article XVI, § 21) added in 2014 by initiative, "conflict with the plaintiffs' argument that an implicit constitutional right to educational adequacy" separately mandates "some minimum specific level of state support to the schools." (Concurrence, 1-2.)

IV. THE COURT OF APPEAL PROPERLY GAVE WEIGHT TO PERSUASIVE OUT-OF-STATE DECISIONS CONSTRUING SIMILAR CONSTITUTIONAL TEXT

The Court of Appeal appropriately looked for guidance to out-of-state decisions construing constitutional text similar to sections 1 and 5. (Opn. 8 & fn. 5.) Plaintiffs provide no valid basis for their contentions that the Court of Appeal "should not have relied so heavily" on these cases. (See Petn. 24.)

This Court has looked to other states' interpretations of sections 1 and 5 in determining their meaning, and noted that it is "especially appropriate" to do so where the California provisions "appear to have been partially modeled on similar provisions in other states' constitutions." (*Arcadia Unified School Dist. v. State Dept. of Ed.* (1992) 2 Cal.4th 251, 260-261.) The Court of Appeal, therefore, appropriately looked to the decisions of the high courts of states such as Indiana and Missouri, whose free school clauses are highly similar to sections 1 and 5, in rejecting plaintiffs' claims. (Opn. 8-12.)

Plaintiffs assert that differing results on similar claims in other states reflect more about each court's views on the appropriate role of the judiciary than about how to interpret the terms used in the state constitutions' school clauses. (Petn. 23, citing Dissent 1-2.) They suggest that the court should have relied instead on decisions that support plaintiffs' viewpoint because there purportedly are "many more" of them. (Petn. 24.) However, as defendants demonstrated below, the great majority of out-of-state decisions that have inferred juidically-enforceable qualitative standards in their state constitutions have construed distinctly different constitutional language that included mandatory qualitative terms or explicit guarantees regarding education not found in our state Constitution. (Resps.' Br. 25-26 & fn. 14.) And, contrary to plaintiffs' contention that the Court of Appeal ignored those decisions, the court acknowledged that decisions from other states have inferred enforceable qualitative duties or rights in the school clauses of their state constitutions. (Opn. 8.) However, the court appropriately looked to those decisions it found "persuasive," and which construed "almost identical constitutional language" to sections 1 and 5. (*Ibid*.)

V. PETITIONERS' SECOND ISSUE IMPROPERLY SEEKS TO REQUIRE THE LEGISLATURE TO ADOPT A PARTICULAR APPROACH TO SCHOOL FUNDING AND WAS NOT ADDRESSED BY THE COURT OF APPEAL

Plaintiffs' second "issue presented" requests review of whether section 5 requires funding purportedly necessary to support "whatever [education] system the State provides, including the current public school system built upon the State's academic content standards." (Petn. 1.) This alternate school funding theory improperly seeks to require the Legislature to adopt a particular approach to school funding, and was not directly addressed by the Court of Appeal. There is no reason for this Court to review this issue in the first instance.

Plaintiffs' second issue seeks review of their contention that sections 1 and 5 require the Legislature to adopt an education budget "demonstrably aligned" to the purported cost of "delivering" (i.e., teaching) the state's academic content standards. (See AA-I:56; Petn. 8, fn. 5.) However, plaintiffs' theory improperly seeks to dictate to the Legislature a specific method of determining education funding. Plaintiffs raised the same issue below (see AOB 6; Opn. 2-3), but the Court of Appeal did not address this theory in its analysis, as its broader conclusion that sections 1 and 5 do not require a minimum level of educational expenditures made it unnecessary to reach this alternate funding theory. (Opn. 2, 13-17.)

The content standards are "models" adopted by the State Board of Education (not the Legislature, as plaintiffs suggest) to guide development of curriculum and testing, and are not themselves enforceable requirements. (See Ed. Code, § 60605, subds. (a)(2)(A)-(B), (c).) Yet, plaintiffs' theory posits that the Court may find a constitutional standard in educational goals and policies adopted by the Legislature, or Board of Education, at any given time. Plaintiffs' attempt to "bootstrap" the goal-oriented academic content standards into a constitutional requirement turns the principle of

constitutional supremacy on its head. Moreover, using such goals to establish a constitutionally-required measure of school funding would constitute poor public policy as it could discourage the Legislature or state education officials from maintaining strong educational goals.

Plaintiffs' "content standards" funding theory also cannot be squared with the California courts' recognition that the public school "curriculum and courses of study" and related matters such as "educational focus, teaching methods, school operations, furnishing of textbooks, and the like," are "not constitutionally prescribed [but] . . . are *details* left to the Legislature's discretion [and] do not constitute part of the system but are merely a function of it." (*Wilson, supra,* 75 Cal.App.4th at p. 1135, emphasis in original, citing *Cal. Teachers Assn. v. Bd. of Trustees* (1978) 82 Cal.App.3d 249, 255; see Dissent 6.)

For these independent reasons, in addition to those stated above, there is no basis for review of plaintiffs' second issue presented.

CONCLUSION

The petition for review should be denied.

Dated: June 20, 2016

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached Answer to Petition for Review uses a 13 point Times New Roman font and contains 4,940 words.

Dated: June 20, 2016

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Campaign for Quality Education v. State of California, et al.**
Case No.: **A134423**
Case Name: **Maya Robles-Wong, et al. v. State of California, et al.**
Case No.: **A134424**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004.

On June 20, 2016, I served the attached **ANSWER TO PETITION FOR REVIEW** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at San Francisco, California, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 20, 2016, at San Francisco, California.

Carmelita Gonzales
Declarant

Signature

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