

IN THE SUPREME COURT OF ARIZONA

KAREN FANN, *et al.*,

Plaintiffs/Appellants,

v.

STATE OF ARIZONA, *et al.*,

Defendants/Appellees.

INVEST IN EDUCATION (Sponsored by
AEA and Stand for Children); and DAVID
LUJAN,

Intervenor-
Defendants/Appellees.

No. CV-21-0058-T/AP

Arizona Court of Appeals,
Division One

No. 1 CA-CV 21-0087

Maricopa County Superior Court

No. CV2020-015495

CV2020-015509

(Consolidated)

(Filed with blanket consent of all
parties)

***AMICI CURIAE* BRIEF OF
SAVE OUR SCHOOLS ARIZONA, EDUCATION LAW CENTER, AND
THE SOUTHERN POVERTY LAW CENTER
IN SUPPORT OF DEFENDANTS/APPELLEES**

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I. STATEMENT OF INTEREST OF *AMICI CURIAE*

Amici curiae Save Our Schools Arizona, Education Law Center, and the Southern Poverty Law Center submit this brief to provide critical context to the Court on the chronic and severe underfunding of Arizona’s public schools, which motivated voter approval of Proposition 208, the law at issue in this appeal. *Amici* have extensive expertise and experience in public education finance in Arizona and in states across the country. *Amici* support the implementation of the voter-enacted Proposition 208, a measure intended to more fully fund Arizona’s public school system.

Save Our Schools Arizona (“SOS Arizona”) is a community-based organization dedicated to strengthening public schools serving Arizona’s children. Its mission includes empowering parents, teachers, and citizens to advocate for strong public schools in every community, and advocating for responsible education policy that keeps public dollars in public schools. SOS Arizona is a registered 501(c)(4) organization. SOS Arizona was formed as a grassroots organization concerned with the perennial lack of financial support provided to Arizona’s public schools. This lack of support has left Arizona as one of the worst states in the country when it comes to funding public schools. SOS Arizona collaborates with other education and community advocacy groups to achieve full funding for public schools. SOS Arizona previously participated in an *amicus*

brief filed by the Arizona Center for Law in the Public Interest for SOS Arizona, Friends of the Arizona School Boards Association and the Arizona School Counselors Association, in support of Invest in Education in *Molera v. Hobbs*, 250 Ariz. 13 (2020).

Education Law Center (“ELC”) is a nonprofit organization, founded in 1973, which advocates to secure equitable and adequate education opportunity for public school children under state and federal laws. ELC advances its mission through policy initiatives, research, parent and community engagement, and litigation. ELC serves as the nation’s “legal defense fund” for public education rights and is among the most effective advocates for equal opportunity and education justice in the United States.

ELC represents the plaintiff school children in the landmark *Abbott v. Burke* school funding case, continuing to enforce effective implementation of fair school funding, early education, and school facility improvements which the New Jersey Supreme Court has found “enabled children in [urban] districts to show measurable educational improvement.” *Abbott v. Burke*, 199 N.J. 140, 150 (2009) (citation omitted). Across the nation, ELC also advances students’ opportunities to learn by providing research related to education cost and fair school funding, high quality preschool, and other proven education programs; assisting parent organizations, policymakers, teachers and others in advocating to improve education resources

and outcomes for vulnerable student populations; and supporting litigation and other efforts to bridge resource gaps in the nation's high-need schools. ELC has participated as *amicus curiae* in state education finance and opportunity cases in California, Colorado, Connecticut, Delaware, Florida, Illinois, Indiana, Maryland, Minnesota, Pennsylvania, Oregon, South Carolina, Michigan, and Texas.

The Southern Poverty Law Center ("SPLC"), based in Montgomery, Alabama, is a nonprofit civil rights organization founded in 1971 to combat discrimination through litigation, education, and advocacy. The SPLC is a catalyst for racial justice in the South and beyond, working in partnership with communities to dismantle white supremacy and advance the human rights of all people. Since it was founded, the SPLC has won numerous landmark legal victories on behalf of exploited and powerless individuals.

The SPLC's Children's Rights practice works to ensure educational equity for all children, including students living in poverty, students with disabilities, and students who have historically faced discrimination. Through litigation, grassroots organizing, and advocacy, SPLC works to ensure that all children have the opportunity to attend a high-quality public school.

No counsel for a party has authored this brief in whole or part. No person or entity other than the *amici* organizations has provided financial resources for the preparation of this brief.

II. INTRODUCTION

Proposition 208, also known as the Invest in Education Act, is an initiative measure approved by Arizona voters in November 2020. Proposition 208 imposes a 3.5% income tax surcharge on incomes above a specified threshold in order to generate revenue for grants to public school districts and public charter schools. A.R.S. § 43-1013; A.R.S. § 15-1281(D). The funds will be used to meet specific, urgent needs in Arizona's underfunded public schools. Pursuant to the law, the majority of this additional revenue will be spent to hire, retain, and increase salaries for teachers and other school personnel such as librarians, counselors, and social workers. A.R.S. §§ 15-1281(D)(1)-(3), (F). Another portion of the revenue will be used to provide high school students with programs and services essential for educational achievement and career preparation. A.R.S. § 15-1281(D)(4).

As the State Defendants/Appellees and the Intervenor-Defendants/Appellees, Invest in Education and David Lujan, have effectively explained in their briefs below and on appeal, Proposition 208 does not violate any provision of the Arizona Constitution and there is no legal basis for this Court to enjoin the law. Additionally, as explained by *amici curiae* here, enjoining the Invest in Education Act would perpetuate ongoing and significant harm to Arizona public school students by depriving them of desperately needed funds to help reverse severe and chronic education funding and resource deficits across the state.

The clear motivation for voter approval of Proposition 208 was to provide urgently needed funding to Arizona’s public schools. Indeed, as *amici curiae* will show, Arizona public schools are among the most severely underfunded in the nation. Arizona ranks at or near the bottom on objective measures of public school funding, and Arizona decreased its effort to fund public education more than any other state during the decade following the 2008 Great Recession. The result is nothing short of tragic: severe shortages of teachers, counselors, and other staff and supports essential to providing students with adequate educational opportunities. Proposition 208 establishes a dedicated source to generate critically needed additional funding, and requires this revenue be spent on the very resources, including teachers, most needed to improve educational opportunities and outcomes for Arizona’s more than 1.1 million public school students.¹ Simply put, enjoining Proposition 208 would deprive Arizona students of the essential education resources and supports critical to their academic success that the voters intended to provide by approving this measure.

¹ Ariz. Dep’t of Educ., *AZ School Report Cards: School Year 2019-20*, <https://azreportcards.azed.gov/state-reports>.

III. ARGUMENT

Proposition 208 Helps Fill the Urgent Need for Increased Funding for Arizona Public Schools

A. Arizonans Voted to Approve Proposition 208 to Increase Funding and Resources for the State’s Underfunded Public Schools

Voters supported and approved Proposition 208 to address the severe and chronic underfunding of Arizona’s public schools. Arizonans are keenly aware of—and support the need to—increase public school funding. The language of Proposition 208 and the campaign that propelled its passage demonstrate this clear motivation. It is also reflected in the extensive press coverage of the initiative.

Opinion polling shows that, for years, Arizona’s citizenry has been deeply and consistently concerned about the lack of adequate funding for the State’s public schools. Results of annual polling conducted on behalf of Expect More Arizona show that, for six straight years, Arizona voters have considered education the state’s top issue.² A majority of respondents to the most recent Expect More Arizona poll believed that education funding was inadequate and an overwhelming majority believed that teacher salaries were too low.³ Respondents made clear that

² Expect More Arizona, *Annual Arizona Education Survey Results*, <https://expectmoreaz-wpengine.netdna-ssl.com/wp-content/uploads/2021/01/Dec-2020-Poll-Results-Infographic.pdf> (survey conducted December 2020).

³ *Id.*

they were willing to invest additional funding in many key areas of education, particularly teacher pay.⁴

Arizonans have also repeatedly demonstrated their concerns about education funding through their votes on ballot measures. Proposition 208 is the latest instance of Arizona voters expressing their will and exercising their constitutional prerogative to increase public education funding and prevent actions that drain funding from public schools. Voters do not support *just any* use of taxpayer funds for education; in 2018, Arizona’s voters overwhelmingly rejected the Legislature’s efforts to divert money from the State treasury to fund private school education.⁵

Barely two years after voters rejected that diversion of funds to so-called Empowerment Scholarship Accounts, the language of the Proposition 208 ballot initiative was explicit about its purpose. The “Findings and declaration of purpose” section of the proposition states that “[t]he People of the State of Arizona find and declare” that “[y]ears of underfunding by the Arizona Legislature have led to crisis-level teacher shortages and woefully inadequate support services” for

⁴ *Id.*

⁵ Ariz. Sec’y of State, *Arizona 2018 General Election Publicity Pamphlet* 107-38 (Nov. 6, 2018), https://azsos.gov/sites/default/files/2018_Publicity_Pamphlet_Final.pdf (section on Proposition 305, Empowerment Scholarship Accounts referendum); Rob O’Dell, *‘Echoing at the state Capitol’: Arizona Prop. 305 to expand school vouchers defeated*, Ariz. Republic (Nov. 6 2018), <https://www.azcentral.com/story/news/politics/elections/2018/11/06/arizona-prop-305-results-voters-decide-school-vouchers/1809291002/>.

Arizona students.⁶ The declaration further states that “[a]dditional permanent funding is needed” for purposes including recruiting and retaining qualified teachers, hiring counselors, closing the achievement gap, and improving career and vocational education.⁷ This framing of the proposition as a direct response to Arizona public school underfunding is confirmed by the arguments supporting the measure in the official election pamphlet.⁸

Press coverage of Proposition 208 also centered on the need to increase funding for the State’s public schools. Contemporaneous reporting on the 2020 election documents the initiative’s origins in the 2018 “Red for Ed” campaign,⁹ during which tens of thousands of Arizonans joined a statewide teacher walkout demanding increased public school funding.¹⁰ And the measure’s passage was

⁶ Ariz. Sec’y of State, *Invest in Education Act: Certification & Text 1*, <https://apps.arizona.vote/electioninfo/assets/18/0/BallotMeasures/I-31-2020%20Certification%20&%20Text.pdf>.

⁷ *Id.*

⁸ Ariz. Sec’y of State, *Arizona 2020 General Election Publicity Pamphlet 137-53* (Nov. 3, 2020), https://azsos.gov/sites/default/files/2020_General_Election_Publicity_Pamphlet_English.pdf (section on “Arguments ‘For’ Proposition 208”).

⁹ See, e.g., Lauren Hernandez, *Proposition 208 on path to victory; would provide school funds that legislators have not*, Cronkite News (Nov. 3, 2020), <https://cronkitenews.azpbs.org/2020/11/03/proposition-208-would-provide-school-funds/>; *Prop 208: Voters approve 'Invest in Ed' ballot initiative*, KGUN9 (Nov. 4, 2020) <https://www.kgun9.com/news/election-2020/prop-208-invest-in-ed-ballot-initiative-vote-still-too-close-to-call> (“The measure was born out of the 2018 ‘Red for Ed’ movement in Arizona in which thousands of teachers, parents and educators demanded more funding for education in the state.”).

¹⁰ *Photos: Massive #RedforEd march in Phoenix and Tuscon in 2018*, Ariz. Daily

widely attributed to Arizonans’ desire to increase funding for public schools struggling with budget and essential resource deficits.¹¹

B. Arizona’s Public Schools Are Chronically and Severely Underfunded and Under-Resourced

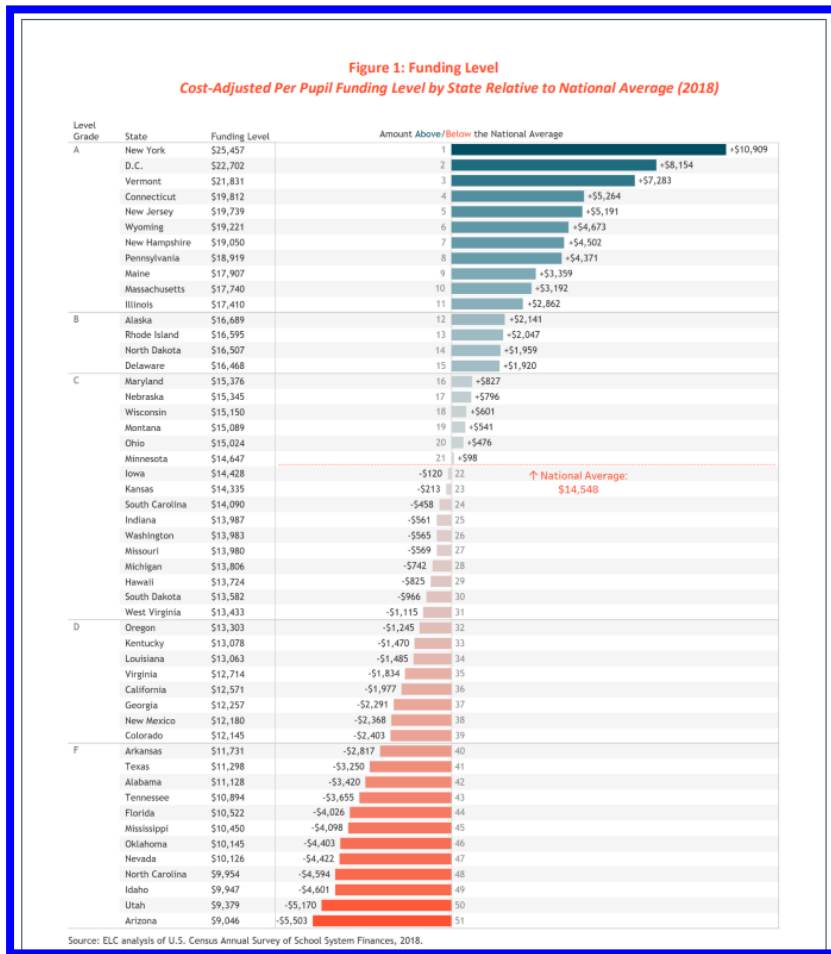
Voters’ concerns about Arizona’s inadequate funding of its public schools are well founded. According to national research conducted by Education Law Center in its recent *Making the Grade* report, Arizona ranks 51st, last among all 50 states and the District of Columbia, in cost-adjusted per-pupil funding levels.¹² Funding is a staggering \$5,503 per pupil, or 38%, below the national average¹³:

Star (Apr. 26, 2018, updated Sept. 20, 2020), https://tucson.com/news/local/photos-massive-redford-march-in-phoenix-and-tucson-in-2018/collection_bbf549ce-499e-11e8-b0af-4b99329062d6.html#1.

¹¹ See, e.g., Nicole Garcia, Justin Lum, Irene Snyder & Associated Press, *Arizona approves Prop 207 recreational pot and Prop 208 schools tax hike*, Fox 10 Phoenix (Nov. 3, 2020), <https://www.fox10phoenix.com/news/arizona-oks-prop-207-recreational-pot-and-prop-208-schools-tax-hike> (“The passing of Proposition[] . . . 208 can be seen as a repudiation of Republican Gov. Doug Ducey and GOP conservatives who control the Legislature. They have . . . been unable to fully restore education funding cut after the Great Recession.”).

¹² Danielle Farrie & David G. Sciarrà, Educ. Law Ctr., *Making the Grade 2020: How fair is school funding in your state?* 5 (2021), <https://edlawcenter.org/assets/MTG%202020/Making%20the%20Grade%202020.pdf>. To facilitate comparison, the report adjusts state funding levels by employing a wage index developed by the National Center for Education Statistics, which accounts for regional wage variations. Educ. Law Ctr., *Making the Grade 2020: How fair is school funding in your state?: Technical Appendix* (2021), <https://edlawcenter.org/assets/MTG%202020/TechnicalAppendix20.pdf>.

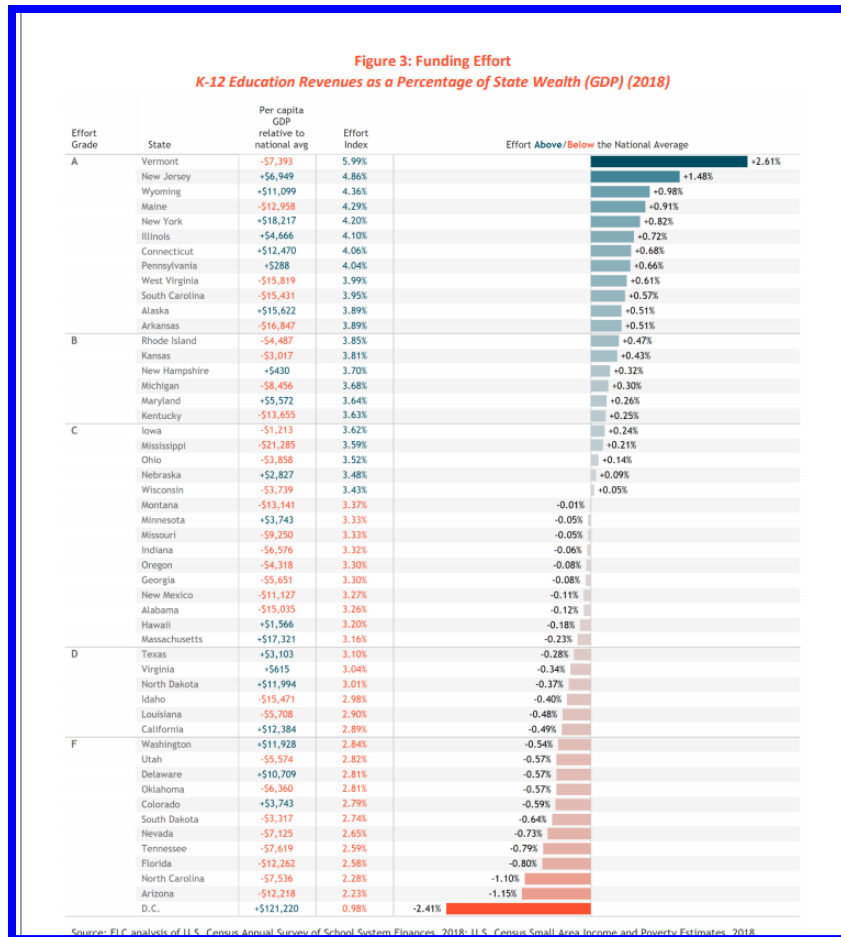
¹³ Farrie & Sciarrà, *Making the Grade*, *supra* note 12, at 5.



Arizona also ranks 50th on its fiscal effort to fund public education, as measured by its investment of revenues in K-12 education as a percentage of state wealth.¹⁴ Arizona invests only 2.23% of its Gross Domestic Product in public education, more than a full percentage point below the national average¹⁵:

¹⁴ *Id.* at 9.

¹⁵ *Id.*



On these two measures, per-pupil funding levels and funding effort, Arizona receives an “F” on the *Making the Grade* report.¹⁶

Compounding Arizona’s school funding crisis is the State’s failure to restore funding cuts made in response to the 2008 Great Recession. Even as the State’s economy recovered beginning in 2009, its funding effort and per-pupil funding levels dramatically declined through 2018. According to a recent Education Law Center analysis, *\$600 Billion Lost: State Disinvestment in*

¹⁶ *Id.* at 4.

Education Following the Great Recession, from 2008 to 2018 Arizona’s funding effort dropped 30%, and its ranking relative to other states plummeted from 41st to 50th.¹⁷ This lower funding effort translated into reduced per-pupil funding levels. From 2008 to 2018, the inflation-adjusted per-pupil funding level in Arizona dropped by 10%.¹⁸ Arizona students lost a shocking \$3.4 billion in school funding over the decade.¹⁹ Had Arizona maintained its pre-Recession funding effort, 2018 school funding would have been \$3,650 higher per pupil.²⁰

At the same time, the percentage of students in poverty attending Arizona’s public schools increased. In 2010-11, 45% of Arizona’s public school students were from low-income families.²¹ By 2017-18, the percentage of low-income students had grown to 55%.²² Low-income students face specific hurdles to

¹⁷ Danielle Farrie & David G. Sciarra, Educ. Law Ctr., *\$600 Billion Lost: State Disinvestment in Education Following the Great Recession* 5 (2021), [https://edlawcenter.org/assets/\\$600%20Billion/\\$600%20Billion%20Lost.pdf](https://edlawcenter.org/assets/$600%20Billion/$600%20Billion%20Lost.pdf).

¹⁸ *Id.* at 6.

¹⁹ *Id.* at 8.

²⁰ *Id.*

²¹ Nat’l Ctr. Educ. Statistics, *Table 204.10 Number and percentage of public school students eligible for free or reduced-price lunch, by state: Selected years, 2000-01 through 2017-18*, https://nces.ed.gov/programs/digest/d19/tables/dt19_204.10.asp?current=yes.

²² *Id.*

successful learning that require additional resources and interventions.²³ Thus, as the population of low-income students increases, education costs also rise.²⁴

Most importantly, Arizona's woefully inadequate public school funding has had a devastating impact on education resources essential to give students the opportunity to achieve academic success. Arizona's severe and persistent teacher shortage is well documented. A December 2020 survey by the Arizona School Personnel Administrators Association found that 27% of teacher positions across the state are vacant.²⁵ In addition, 47% of teacher positions across the state are being filled by individuals who do not meet standard teacher requirements.²⁶

Arizona ranks among the bottom of the states in teacher salary, placing 47th in

²³ For example, children living in poverty are twice as likely to have experienced three or more adverse childhood experiences (ACEs) than more affluent children. ChildTrends, *Adverse Childhood Experiences* (2019), https://www.childtrends.org/indicators/adverse-experiences#_ftn2. ACEs inhibit the development of critical learning skills such as executive function and memory. Jack P. Shonkoff, et al., *Technical Report: The Lifelong Effects of Early Childhood Adversity and Toxic Stress*, Vol. 129(1) *Pediatrics: Official Journal of the American Academy of Pediatrics* e232-46 (2012), <https://pediatrics.aappublications.org/content/pediatrics/129/1/e232.full.pdf>. Thus, children who have experienced ACEs often need additional services in schools to mitigate the negative impact of ACEs on learning.

²⁴ Mary McKillip & Theresa Luhm, Educ. Law Ctr., *Investing Additional Resources in Schools Serving Low-Income Students* (2020), https://edlawcenter.org/assets/files/pdfs/publications/Investing_in_Students_Policy_Bri.pdf.

²⁵ Ariz. Sch. Personnel Administrators Assoc., *Human Resources Professionals in Arizona Schools, As of December 2020*, <https://drive.google.com/file/d/1r9dEm0NlXILodz-sjpCFV7C-PPY-Lz5J/view>.

²⁶ *Id.*

2018-19.²⁷ In 2019, Arizona had the nation's worst student-counselor ratio, at 905-1.²⁸ Arizona also has among the largest class sizes in the country.²⁹ Additionally, State funding for full-day kindergarten, eliminated in 2011, has never been restored.³⁰

This stark reality of education deprivation endured daily by Arizona's students provides the context for voter approval of Proposition 208.

C. Increased Funding and Resources Will Improve Education Opportunities and Outcomes for Arizona Students

A growing body of research has consistently found a strong association between education resources and student achievement. Earlier research demonstrated a positive relationship between school spending and academic outcomes. A more recent review of the existing studies on school spending has

²⁷ Nat'l Educ. Assoc., *2020 Rankings and Estimates Report* 24, <https://www.nea.org/research-publications>.

²⁸ Lily Altavena, *905 to 1: Arizona has worst ratio of students to counselors in the nation*, AZCentral (May 8, 2019), <https://www.azcentral.com/story/news/local/arizona-education/2019/05/08/arizona-worst-ratio-students-counselors-in-nation-school-safety/1131862001/>.

²⁹ Nat'l Ctr. Educ. Statistics, *National Teacher and Principal Survey (NTPS): Average class size in public schools, by class type and state: 2017-18*, https://nces.ed.gov/surveys/ntps/tables/ntps1718_ftable06_t1s.asp; Justin Wing, *AZ'S Severe Teacher Shortage Continues*, AZed News (Jan. 5, 2021), <https://azednews.com/azs-severe-teacher-shortage-continues-as-spring-semester-starts/>.

³⁰ Ariz. Sch. Bds. Assoc., *Arizona's Unrestored Budget Cuts*, <https://azsba.org/resources/arizonas-unrestored-budget-cuts/>.

reached an even more definitive conclusion. This review finds that national research on school finance reforms provides “compelling evidence that there is a positive causal relationship” between increased education spending and academic and life outcomes, including higher educational attainment, increased earnings, and a reduction in adult poverty.³¹

The effects of boosting school spending are especially pronounced for low-income students.³² For example, one longitudinal study of 28 states from 1970-2010 found that, for low-income children, increasing per-pupil spending by 20% for a child’s entire K-12 schooling career yields the following *increases*: high school completion by 22.9%, overall number of years of education by 0.928, adult earnings by 24.6%, and annual family income by 52.2%.³³ The study also found that higher spending reduces the incidence of adult poverty by 19.7%.³⁴

A recent Education Law Center analysis, entitled *Starting from the Bottom: First Steps to Improve School Funding in Arizona*, demonstrates that Arizona can redress the state’s dire shortages in educational resources, and correspondingly

³¹ C. Kirabo Jackson, *Does School Spending Matter? The New Literature on an Old Question* 9, National Bureau of Economic Research Working Paper (2018), <https://www.nber.org/papers/w25368>.

³² *Id.*

³³ C. Kirabo Jackson, et al., *The Effect of School Finance Reforms on the Distribution of Spending, Academic Achievement, and Adult Outcomes* 44, National Bureau of Economic Research Working Paper (2014), <https://www.nber.org/papers/w20118>.

³⁴ *Id.*

improve student outcomes, by increasing school funding. The study recommended increasing Arizona’s school funding by \$1.1 billion.³⁵

The study further demonstrated that these increases would have a direct impact on critical school resources. For example, the increased funding could add 14,500 teachers and counselors to the public school workforce—an increase of approximately eight new teachers and two new counselors in every school in the state.³⁶ The result would increase overall teaching staff by 20% and would more than double the number of counselors in each school.³⁷ Alternatively, the additional funding could be used to hire five new teachers and one new counselor per school, or more than 8,100 new teachers and counselors could be hired along with a 15% salary increase for all teachers.³⁸

Evidence from around the nation demonstrates that directing critical resources to students most in need improves their academic outcomes. Improving working conditions and teacher salaries promotes more equitable distribution of qualified teachers and reduces teacher turnover, which in turn raises student outcomes.³⁹ Hiring more teachers enables districts to reduce class sizes, a measure

³⁵ Mary McKillip & Danielle Farrie, Educ. Law Ctr., *Starting from the Bottom: First Steps to Improve School Funding in Arizona* 3 (2020), https://edlawcenter.org/assets/Arizona/Starting_from_the_Bottom.pdf.

³⁶ *Id.* at 5.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Frank Adamson & Linda Darling Hammond, *Funding Disparities and the*

which has a lasting impact on students, particularly low-income students.⁴⁰

Moreover, bringing down student-counselor ratios to 250:1 or lower improves student outcomes, such as graduation rates.⁴¹ Students in poverty are particularly positively impacted by low student-to-counselor ratios.⁴²

The Invest in Education Act is explicitly intended and designed to provide critical funding for the very resources recommended in ELC's *Starting from the Bottom* report and demonstrated to improve student outcomes. The majority of the revenues raised by Proposition 208 are to be directed to recruiting and retaining

Inequitable Distribution of Teachers: Evaluating Sources and Solutions, ASU Education Policy Analysis Archives (Nov. 9. 2012), <https://epaa.asu.edu/ojs/article/view/1053>; see also Bruce Baker, *How Money Matters for Schools*, Learning Policy Institute (2017), https://learningpolicyinstitute.org/sites/default/files/product-files/How_Money_Matters_REPORT.pdf.

⁴⁰ William J. Mathis, *The Effectiveness of Class Size Reduction*, Nat'l Educ. Policy Ctr. (2016),

<https://nepc.colorado.edu/sites/default/files/publications/Mathis%20RBOPM-9%20Class%20Size.pdf>; Diane Whitmore Schanzenbach, *Does Class Size Matter?*, Nat'l Educ. Policy Ctr. (2014),

https://nepc.colorado.edu/sites/default/files/pb_-_class_size.pdf.

⁴¹ Jennifer Parzych, et al., *Measuring the Impact of School Counselor Ratios on Student Outcomes*, ASCA Research Report, American School Counselor Association (2019), <https://www.schoolcounselor.org/getmedia/5157ef82-d2e8-4b4d-8659-a957f14b7875/Ratios-Student-Outcomes-Research-Report.pdf>.

⁴² See, e.g., Amy Engelman, Colo. Dep't of Educ., *2020 Legislative Report: Colorado School Counselor Corps Grant Program* (2020),

<https://www.cde.state.co.us/postsecondary/2020-sccg-pdf#:~:text=The%20purpose%20of%20the%20School,a%20focus%20on%20posts econdary%20preparation.&text=i%20SCCGP%20was%20created%20to,implemen ting%20these%20types%20of%20activities>.

teachers, thus addressing the severe teacher shortage and class size problem in Arizona schools, and to hiring counselors and other critical staff for Arizona students who need these supports.

IV. CONCLUSION

For the foregoing reasons, *amici curiae* respectfully request that this Court affirm the denial of the Plaintiffs/Appellants' request for a preliminary injunction.

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