IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
No. 22-616

STATE OF WEST VIRGINIA,

***Petitioner*,**

v.

TRAVIS BEAVER and WENDY PETERS,

Respondents.

Intermediate Court of Appeals of West Virginia
No. 22-ICA-1 (consolidated with 22-ICA-3)

Circuit Court of Kanawha County
Civil Action Nos. 22-P-24, 22-P-26

AMICUS CURIAE BRIEF OF YES. EVERY KID. FOUNDATION IN SUPPORT OF PETITIONER'S MOTION FOR STAY

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INTRODUCTION

The Hope Scholarship Act (the Act) was passed and signed into law more than fifteen months ago, and took effect on June 15, 2021. Since then, thousands of West Virginians have made plans and decisions for education this coming fall in reliance on the Act. As explained in this brief, some even chose to move to West Virginia because of the new scholarship program. That was the settled state of the world until July 6, 2022.

The circuit court's injunction has upset this status quo, thrown these plans into complete disarray, and should be stayed until the Intermediate Court of Appeals can review the merits of that decision. To begin with, the balance of harms and the public interest strongly favor a stay. On one hand, real families—just like the three whose stories are set forth below—have lost the scholarship mere weeks before the start of school. On the other, all of Respondents' alleged harm is built on the entirely speculative claim that the public school budget *one year from now*—for the 2023-24 school year—*might* be reduced. There is simply no way to know whether that will occur. The school funding formula—on which Respondents rest their argument—*does not impose a ceiling* on what funding the Legislature may ultimately provide when it considers that budget next spring. What is more, Respondents' claims are unlikely to survive appellate review for many reasons, including several principles of state constitutional law that *amicus* highlights below.[1]

The case for a stay is at least as strong as the other recent instances in which this Court has stayed injunctions of duly enacted acts of the Legislature. *See, e.g.*, *Blair v. Brunett*, No. 22-0070 (W. Va. Feb. 23, 2022) (staying injunction of charter school law); *Morrisey v. W. Va. AFL-CIO*, 243 W. Va. 86, 842 S.E.2d 455 (2020) (noting stay of injunction of Workplace Freedom Act).

[1] *Amicus* certifies that this brief was not authored in whole or part by a counsel for a party, and no such counsel or party made a monetary contribution specifically intended to fund the preparation or submission of this brief. W. Va. R. App. P. 30(e)(5).

INTEREST OF *AMICUS CURIAE*

Amicus Curiae, yes. every kid. Foundation, has a particular interest in this case as a national organization dedicated to ensuring families have every available educational option to choose for their children. That includes the freedom to choose the education that best fits a student's needs, whether it is a public school, private school, charter school, or homeschool. *Amicus* supports education policy, like the Hope Scholarship Act, that respects the dignity of every student, fosters a variety of custom-tailored approaches, and opens the free flow of ideas and innovation.

For several reasons, *amicus* is well-positioned to assist this Court in considering the pending motion for stay. As shown in Part I of this brief, *amicus* has interacted with West Virginia families who have been approved to participate in the Hope Scholarship Program and is able to offer the perspective of those families. At the same time, *amicus* has deep experience nationally with the law and policy of school choice and is able to help situate this case in that broader context.

ARGUMENT

I. The balance of harms strongly favors a stay.

Real children face immediate and irreparable harm without a stay of the injunction. Thousands of students have already based their schooling decisions for the coming year in reliance on the Act. More than a month before the circuit court's injunction, roughly 3,000 scholarships had already been approved for the upcoming school year.[2] That was indisputably the status quo: the Hope Scholarship Act had lawfully taken effect and was being implemented. Contrary to Respondents' assertion, the injunction did not maintain the status quo, but upset it—as would be true of any injunction that purported to set aside a law currently in effect.

[2] Ryan Quinn, *More than 3,000 WV students approved for nonpublic school vouchers*, CHARLESTON GAZETTE-MAIL (May 30, 2022), https://www.wvgazettemail.com/news/education/more-than-3-000-wv-students-approved-for-nonpublic-school-vouchers/article_725f7f8c-2d58-5a05-a963-9d767bc44097.html.

Now, absent a stay, many of those students will not be able to undertake the schooling they and their parents intended this year. And it goes without saying that they will not be able to get that year back. It is hard to imagine a clearer example of both immediate and irreparable harm. One need look no further than the last two years for proof of the indelible harm children suffer when deprived of educational opportunities.

In contrast, a stay will not result in any irreparable harm to Respondents. *All* of Respondents' alleged harms are premised on the public schools losing funding. But it is undisputed that the Hope Scholarship Act has not affected the public school budget for this coming school year. And as for *next* year—the 2023-24 school year—*no one knows what that budget is or will be*. Respondents argue that the budget will necessarily be reduced because the school funding formula is based on public school enrollment, which will decrease as students take advantage of Hope Scholarships. But the formula is only based in part on enrollment and, in any event, does not impose a ceiling on what funding the Legislature may provide for public schools. Nor does anything in the Hope Scholarship Act. So until the Legislature actually adopts the budget—*next spring*—Respondents' claims of harm from reduced funding are entirely speculative. Tellingly, despite numerous opportunities, Respondents have offered absolutely no response to any of this.

Respondents also argue the State will suffer irreparable harm if Hope Scholarships are distributed and later found unconstitutional. But it is well settled that the loss of money is ordinarily not considered irreparable harm, because money can be recovered. *E.g.*, *Philip Morris USA Inc. v. Scott*, 561 U.S. 1301, 1304 (2010) (Scalia, J., in chambers) ("Normally the mere payment of money is not considered irreparable …."). Respondents offer no reason (because there is none) to support their bald claim that the State will lack the power or ability to collect money from its citizens.

To aid this Court's understanding of the harms caused by the injunction, the next sections relate the stories of three West Virginia families that have sought and been approved for Hope Scholarships: the Harveys, the Gallaghers, and the van Wyks. As the stories show, these families each have different motivations for seeking the scholarships—from safer learning environments to more individualized programming to a closer alignment with the values being taught. But what is common to them all is that without a stay, they all stand to permanently lose the opportunities that the Hope Scholarships would have made available to them this year.

A. The Harveys

Kristin and Josh Harvey live in Raleigh County with their six children, aged two through twelve. All, except the two-year-old, are enrolled in public schools. Kristin applied to the Hope Scholarship Program on behalf of all of her children, and all have been approved.

The Hope Scholarships are important and necessary to the Harvey family because Kristin previously homeschooled the children and found that it worked well for them. Kristin loves the freedom of homeschooling and being able to customize the children's educations to their specific needs. But as the family grew, the resources needed to homeschool exceeded the family budget. For example, each child needs a curriculum, which can be expensive. Kristin tried cobbling together a program using less expensive curricula for each child, rather than purchasing a higher quality—and higher cost—program that could be tailored to multiple children. But trying to piece together cheaper curricula didn't really work and left the children unable to access classes they wanted because some units were too expensive.

The Harveys turned back to both public and private schools, but they felt the children did not thrive in either setting for a variety of reasons. For instance, there were issues with bullying and the children's peer groups. Not all of their kids learned well in the traditional classroom format, especially the ones that had particular interests in certain subject areas, like math. And they did

not feel like the schools communicate adequately. Like many other parents, the Harveys would like more transparency into what their children are learning.

Josh, who was homeschooled for years as a child, appreciates the challenges homeschooled children face missing out on extracurriculars that must be individually sought and paid for. Kristin and Josh plan to fill the gaps in enrichment activities with Hope Scholarship money—dance and gymnastics lessons for their seven and nine-year-old daughters; STEM robotics classes for their eldest son; and musical instrument lessons. And with the goal of "educating the whole child," the Harveys plan to explore opportunities in sports.

They believe that the Hope Scholarships "will change our children's lives 100%." But after hearing of the injunction, the Harveys have had to put together the best possible homeschooling program they can with the finances they have. They are not returning to the public school system, but rather are proceeding with less than what they planned, with the hope that the injunction will be stayed and the scholarships will become available again.

B. The Gallaghers

Ashli Gallagher and her family live in Harrison County. She has two boys: a five-year-old and an eight-year-old, both of whom have been attending public school.

Ashli was born in West Virginia. She and her husband moved to Pennsylvania to an area that was close to the oil field where they worked. But when they heard that the Hope Scholarship Program was percolating through the legislative process, the thought that they could put their kids in the school of their choice sparked their interest in moving back, which would also put them closer to their families.

They moved back from Pennsylvania in June 2021 and sought a school for their kids. Harrison County was ranked seventh in West Virginia and the location was within the limited area

that was close to work and family. They placed their children in public schools while waiting for the Hope Scholarship Program to begin.

Their experience with the public schools has reaffirmed their initial interest in the Hope Scholarship Program. Safety is an issue at the school. Ashli must pick up her kindergartner in the alley behind the school, which is lined by drug houses. In addition, the third grade classroom is small and cluttered and so crowded that the kids can barely move. And although they are happy with the teachers, Ashli and her husband are uncomfortable with some of the things their kids are learning in the classroom and outside of it from peers. Finally, the Gallaghers have also found that meetings with teachers are strictly time-limited, and there have been incidents at school that have not been timely communicated to them.

The Gallaghers have been looking forward to moving both children to Emmanuel Christian School (Emmanuel), using the Hope Scholarships awarded to both children. Ashli has found Emmanuel to be very responsive and welcoming of parents into the classroom. And Emmanuel also has smaller class sizes, and no time limits on parent conferences. Perhaps most important, Ashli believes that the new school's focus on a classical Christian education will be more consistent with her and her husband's upbringing, which they would like to continue with their own children. Both children have been admitted, and the Gallaghers already paid the registration fee but need the Hope Scholarship to be able to pay the tuition.

After hearing of the injunction, Ashli "felt sick." The Gallaghers' only hope of providing the education they feel their children need is with the Hope Scholarships.

C. The van Wyks

Brittany and Jacques van Wyk live in Mt. Hope. They have three children: a son aged 10 who is in fourth grade, a daughter aged 7 who is in first grade, and a son aged 5 who is in pre-K.

The family moved to West Virginia in February 2021. Coming off of homeschooling due to Covid, they enrolled the oldest in Mt. Hope Christian Academy, a private school. They were planning to finish out the school year by homeschooling their middle child and then enroll both younger children in the same school. But in the meantime, they heard about the Hope Scholarships. So to maintain eligibility for the program, the two younger children were placed in public school. Both children have been approved for Hope Scholarships for the coming school year.

With the Hope Scholarships, the van Wyks were looking forward to moving all their children into the same school. The faith component of education at Mt. Hope Christian Academy is important to them and, obviously, unavailable in the public schools. Their oldest is thriving, and they believe their younger two will, as well.

But that is not the only benefit they anticipated from the Hope Scholarships. Prior to moving to West Virginia, the van Wyks lived in California, where their oldest participated in a state charter homeschool program that granted families access to funds to craft an a la carte approach to education. That program, which provided funding in an amount similar to the Hope Scholarship, allowed the funds to be used for homeschooling programs and enrichment activities. For example, their fourth grader is obsessed with animals, so while he was homeschooled the family could use his funding to visit the San Diego Zoo and Seaworld. He was also able to take skateboarding lessons and get access to the skatepark, which allowed him to become an advanced skateboarder by age 5. What is more, the broad availability of funding for enrichment programs spawned a market in which enrichment centers popped up for art, music, and Spanish lessons—the type of lessons that couldn't be easily taught at home.

The van Wyks have been looking forward to the possibility of replicating some of their experience in California by filling in gaps in areas such as music or dance. Their hope was that

over time, the availability of the program would result in more vendors entering the market to provide enrichment learning, allowing each kid to have tailored learning experiences. They've seen firsthand just how successful these kinds of scholarships can be in giving students options.

The injunction has been "disheartening and discouraging" to the van Wyks, and this lawsuit alone has provided them a reason to consider moving again to be closer to family.

II. Respondents are unlikely to succeed on the merits on appellate review.

The State well explains the numerous flaws with, and obstacles that stand in the way of, Respondents' claims. *Amicus* thus focuses instead on three principles of state constitutional law that independently undermine Respondents' claims.

A. Respondents do not meet the extraordinary standard required to invalidate a state law as unconstitutional on its face.

Alleging a statute is facially unconstitutional, as Respondents do here, "is the most difficult challenge to mount successfully" and requires the challenger to "establish that no set of circumstances exists under which the legislation would be valid." *Lewis v. Canaan Valley Resorts, Inc.*, 185 W. Va. 684, 691, 408 S.E.2d 634, 641 (1991) (citing *Rust v. Sullivan*, 500 U.S. 173, 183 (1991)). For example, in *State ex rel. Haden v. Calco Awning & Window Corp.*, this Court upheld the constitutionality of a statute that could potentially allow the State to tax corporate officers who could not be taxed. 153 W. Va. 524, 529, 170 S.E.2d 362, 366 (1969). The plaintiffs there asserted that "because the statute may be applied so as to attach liability to an officer who has no possible responsibility in relation to the tax, such statute is unconstitutional." 153 W. Va. at 530, 170 S.E.2d at 366. Among other things, this Court responded that "where a statute is susceptible of application in a valid or in an invalid manner it will, ordinarily, be held valid." *Id.*

This high burden reflects important separation of powers principles. *See MacDonald v. City Hosp., Inc.*, 227 W. Va. 707, 722–23, 715 S.E.2d 405, 420–21 (2011). This Court has long

said that courts must presume the constitutionality of legislation, avoid constitutional questions where possible, and construe a statute consistent with the constitution. For example, "[w]hen the constitutionality of a statute is questioned every reasonable construction of the statute must be resorted to by a court in order to sustain constitutionality, and any doubt must be resolved in favor of the constitutionality of the legislative enactment." *Frazier v. McCabe*, 244 W. Va. 21, 26, 851 S.E.2d 100, 105 (2020) (quotation marks omitted). The mandate not to strike down a statute facially, except in extraordinary circumstances, is of similar stock.

Here, Respondents have fallen well short of showing that the Hope Scholarship Act will be unconstitutional *in all its applications*. Like their claims of harm, most of Respondents' merits arguments are built on the premise that public schools will lose funding. In support, Respondents rely entirely on the fact that the school funding formula depends on school enrollment, which they argue will decline with each Hope Scholar. That argument does not withstand scrutiny.

Even assuming that a reduction in overall funding would, standing alone, be unconstitutional, Respondents fail to show such a reduction will occur or be attributable to the Hope Scholarship Act. They have consistently ignored that the formula *does not impose a ceiling* on what funding the Legislature may provide to public schools. Nor have Plaintiffs pointed to any language in the Act that *requires* a reduction in public school funding. Whether funding will actually decline turns on an independent decision of the Legislature that is in no way dictated or restrained by anything in the Act. While the Legislature might allow a reduction to occur, it might also supplement the moneys called for by the school funding formula to ensure no reduction. Moreover, even if overall funding decreases, it is hardly obvious that the decrease is due to the Act and not some other reason, such as the consistent years-long decline in public school attendance.[3]

[3] Anthony Conn, *Schools forced to cut positions as enrollment declines in most W.Va. counties*, WCHS (May 23, 2022) ("Public School enrollment in West Virginia has gone down every year since 2014."),

Respondents simply cannot establish that the Act will *necessarily* lead to a reduction in public school funding. So even assuming such a reduction would be unconstitutional, Respondents have failed to carry their burden. "[C]ourts will not, on the mere possibility of an unconstitutional application, declare a statute invalid." *Haden*, 153 W. Va. at 530, 170 S.E.2d at 366.

B. Respondents ignore that state legislatures have plenary power.

Respondents place great weight on the doctrine of *expressio unius*, arguing that it may be *implied* from the Constitution that the Legislature lacked the power to enact the Hope Scholarship Act. But that is inconsistent with how state constitutions work. As this Court has said, "the negation of legislative power *must appear beyond reasonable doubt*." Syl. pt. 3, *State ex rel. Cooper v. Tennant*, 229 W. Va. 585, 730 S.E.2d 368 (2012) (emphasis added).

That is because the Legislature has essentially plenary power, unless a power is expressly limited by the Constitution. It is the opposite of what every child learns about the federal system:

> The Legislature of this State, unlike the Congress of the United States, under the Federal Constitution, does not depend for its authority upon the express grant of legislative power. The Federal Constitution is a grant of power; a State Constitution is a *restriction* of power. The Constitution of a State is examined to ascertain the restraints, if any, which the people have imposed upon the Legislature, *not* to determine the powers they have conferred.

Harbert v. Cty. Court of Harrison Cty., 129 W. Va. 54, 66–67, 39 S.E.2d 177, 187, (1946) (emphases added). Put another way, "[t]he Constitution of West Virginia being a restriction of power rather than a grant thereof, the legislature has the authority to enact any measure not inhibited thereby." Syl. pt. 1, *Foster v. Cooper,* 155 W. Va. 619, 186 S.E.2d 837 (1972).

This principle requires extra care in applying *expressio unius* to the Constitution. "Virtually all the authorities who discuss the negative-implication canon emphasize that it must be applied

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https://wchstv.com/news/local/as-school-enrollment-declines-in-most-wva-counties-schools-forced-to-cut-positions.

with great caution, since its application depends so much on context." ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 107 (2012); *see also* REED DICKERSON, THE INTERPRETATION AND APPLICATION OF STATUTES 234–35 (1975). The context of a state constitution—where "the negation of legislative power *must appear beyond reasonable doubt*"—is one of those in which the doctrine of *expressio unius* must at least somewhat give way.

As one state high court has said, "there is no reason to believe that a Constitutional provision enumerating powers of a branch of government was intended to be an exclusive list." *Idaho Press Club, Inc. v. State Legislature*, 132 P.3d 397, 399–400 (Idaho 2006). And conversely, when a state constitution expressly limits certain powers, "there is no reason to believe that [the drafters] intended the limitation to be broader than they drafted it." *Id.* at 400. "It is not reasonable to assume that they intended to impose other, unstated limitations." *Id.*

Applying these principles, it is clear that Respondents are erroneously construing Article XII, Section 1 of the Constitution, which states: "The Legislature shall provide, by general law, for a thorough and efficient system of free schools." W. VA. CONST. art. XII, § 1. Respondents contend that this provision implicitly bars funding for anything other than "free schools." But that reading commits exactly the errors discussed above—"believ[ing] that a Constitutional provision enumerating powers of a branch of government was intended to be an exclusive list" and "assum[ing] … other, unstated limitations." *Idaho Press Club*, 132 P.3d at 399–400.

The proper reading is that this provision addresses the Legislature's duties regarding "free schools"— they must be "thorough and efficient"—and no more. The provision defines *how* the Legislature must provide for "free schools." But nothing indicates, "beyond reasonable doubt," that the Legislature is also stripped of its inherent power to fund other schools.

Consistent with this, similar constitutional provisions have not stripped other state legislatures' inherent power to fund non-public education alternatives. The Wisconsin legislature satisfied a mandate to provide "uniform" "district schools" by assuring certain public educational opportunities. *Davis v. Grover*, 480 N.W.2d 460, 473 (Wis. 1992). Beyond that, the legislature was "free to act as it deems proper." *Id.* at 473. Similarly, the North Carolina legislature was permitted to fund "modest scholarships" outside the public schools. *Hart v. State*, 774 S.E.2d 281, 289 (N.C. 2015). The state high court explained that the mandate to provide a "general and uniform system of free public schools" spoke only to *how* the legislature must provide for public schools: the provision "applies exclusively to the public school system and does not prohibit the General Assembly from funding educational initiatives outside of that system." *Id.* at 289–90.

Moreover, Respondents' reading would call into question other legislative programs that use public funds for non-public education purposes. In 2020, West Virginia provided about $7.5 million of financial aid to students at private universities in the State, including the annual Promise Scholarship.[4] W. Va. Code § 18C-7-6. West Virginia also supports non-public education through transportation, subsidized funding for textbooks, and other social services. *See id.* § 18-5-21b (allowing county boards to provide state-adopted textbooks to students enrolled in private schools); *Janasiewicz v. Bd. of Educ. of Cty. of Kanawha*, 171 W. Va. 423, 426, 299 S.E.2d 34, 37 (1982) (upholding statute that allowed county to provide bussing to sectarian school students).

C. Respondents fail to consider the Legislature's constitutional duty to foster and encourage general education.

Courts must interpret provisions of the Constitution in context, not in isolation. "Questions of constitutional construction are in the main governed by the same general rules applied in

[4] *State Profile: West Virginia*, STATE HIGHER EDUCATION FINANCE, https://shef.sheeo.org/state-profile/west-virginia/ (last visited August 1, 2022).

statutory construction." *State ex rel. Workman v. Carmichael*, 241 W. Va. 105, 117, 819 S.E.2d 251, 263 (2018) (quotation marks omitted). Thus, in both constitutional and statutory contexts, "a court should not limit its consideration to any single part, provision, section, sentence, phrase or word, but rather review the [document] in its entirety to ascertain legislative intent properly." *State v. Stone*, 229 W. Va. 271, 283, 728 S.E.2d 155, 167 (2012) (quotation marks omitted).

Respondents focus on Article XII, Section 1 of the Constitution, but ignore the import of Section 12 of that same article. Article XII, Section 12 broadly requires the Legislature to foster "moral, intellectual, scientific and agricultural improvements" and provide for "such institutions of learning as the best interests of general education in the State may demand." In full, it states:

> The Legislature shall foster and encourage moral, intellectual, scientific and agricultural improvements; it shall, whenever it may be practicable, make suitable provisions for the blind, mute and insane, and for the organization of such institutions of learning as the best interests of general education in the State may demand.

W. VA. CONST. art. XII, § 12.

This provision plainly contemplates the Legislature fostering education initiatives beyond the "system of free schools." As the West Virginia Attorney General long ago explained, "Article XII's Section 12 has reference to schools other than those which form a part of the free school system." Letter to the Hon. Charles C. Wise, Jr. & the Hon. Perce J. Ross, 51 W. Va. Op. Att'y Gen. 852, 866 (1966). It specifically contemplates more tailored educations for the "blind, mute and insane." But it also plainly recognizes the Legislature's "discretionary power" to create general postsecondary institutions—like West Virginia University and Marshall University—that "are not . . . considered a part of the 'free school' system." *Id.*; *see United Mine Workers of Am. Int'l Union v. Parsons,* 172 W. Va. 386, 394, 305 S.E.2d 343, 350 (1983) (noting that West Virginia University exists as a "legislative fulfillment" of the "constitutional mandate").

Other states have interpreted similar provisions in their constitutions as recognizing their legislature's power to fund non-public education in addition to maintaining public schools. For instance, in *Schwartz v. Lopez*, the Nevada Supreme Court confronted a provision under the Nevada Constitution that required its legislature to "'encourage by all suitable means the promotion of intellectual, literary, scientific, mining, mechanical, agricultural, and moral improvements.'" 382 P.3d 886, 897 (Nev. 2016) (en banc) (quoting NEV. CONST. art. XI, § 1). The court held that this provision "reflect[ed] the framers' intent to confer broad discretion on the [l]egislature in fulfilling its duty to promote intellectual, literary, scientific, and other such improvements, and to encourage other methods *in addition to* the public school system." *Id.* (emphasis added). Likewise, in *Meredith v. Pence*, the Indiana Supreme Court upheld the state's public funding of non-public education because a similar clause under the Indiana Constitution charged the legislature with making educational improvements "*in addition* to provision for the common school system." 984 N.E.2d 1213, 1222 (Ind. 2013).

Moreover, the only court to rely on *expressio unius* in an education funding context dealt with a state constitution that did *not* have two legislative duties. In *Bush v. Holmes*, the Florida Supreme Court relied on a provision of its state constitution that required "'a uniform, efficient, safe, secure and high quality system of *free public schools*.'" 919 So. 2d 392, 407 (Fla. 2006) (quoting FLA. CONST. art. IX, § 1(a)). Both the *Schwartz* and *Meredith* courts distinguished *Bush* because their constitutions contained *two* distinct duties—one for public schools and another for general education. *Meredith*, 984 N.E.2d at 1224; *Schwartz*, 382 P.3d at 898. Similarly here, the West Virginia Constitution references two separate responsibilities in Article XII—one to "foster and encourage … general education" whenever "practicable" (Section 12) and another to provide for "a thorough and efficient system of free schools" (Section 1).

The Hope Scholarship Program clearly advances the Legislature's mandate under Section 12 to "foster and encourage … general education" whenever "practicable." School choice has been shown to improve academic outcomes, leading to increased graduation rates and more students going to college.[5] Eighteen "gold-standard" studies have identified a causal relationship between school choice and high student performance.[6] A vast body of research also shows educational choice programs save taxpayers money, reduce segregation in schools, improve students' civic values, and financially assist low-income families.[7] Comments from West Virginia legislators prior to the Act's enactment demonstrate that the Legislature had some of these goals in mind.[8]

CONCLUSION

The motion for stay should be granted.

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[5] *See* Joshua M. Cowen, et al., *Student Attainment and the Milwaukee Parental Choice Program: Final Follow-up Analysis*, School Choice Demonstration Project Milwaukee Evaluation Report #30, at 16–17 (Feb. 2012, updated & corrected Mar. 8, 2012), https://www.uaedreform.org/downloads/2012/02/report-30-student-attainment-and-the-milwaukee-parental-choice-program-final-follow-up-analysis.pdf.

[6] Greg Forster, Ph.D., *A Win-Win Solution: The Empirical Evidence on School Choice*, at 10 (4th ed. May 2016), http://www.edchoice.org/research/win-win-solution/.

[7] *See, e.g.*, *id.* at 1–2, 4, 21–23, 26–28, 30.

[8] Statement of Senator Rollan A. Roberts, W. Va. Legislature, S. Floor Debate, at 12:56:37–12:56:58 (Mar. 17, 2021), http://sg001-harmony.sliq.net/00289/Harmony/en/PowerBrowser/PowerBrowserV2/20210317/-1/49811 ("The critics of this Legislation have positioned themselves against some of West Virginia's most vulnerable children. Many of which come from low-income, special needs, and minority populations, and desperately need an alternative method of educating their children."); Steven A. Adams, *West Virginia Senate Passes Education Savinngs* [sic] *Account Bill, Sends It Back to House of Delegates*, THE INTELLIGENCER (Mar. 18, 2021), https://www.theintelligencer.net/news/top-headlines/2021/03/west-virginia-senate-passes-education-savinngs-account-bill-sends-it-back-to-house-of-delegates/ (quoting Senate Education Committee Chairwoman Patricia Rucker) ("'It is funding kids, and these are West Virginia students and West Virginia taxpayers, and there could be a multitude of reasons why they apply for a Hope Scholarship and why they are seeking this help.'"); Liz McCormick, *Bill Creating Publicly Funded Education Savings Accounts Heads To W.Va. Senate*, W. VA. PUB. BROADCASTING (Mar. 4, 2021), https://www.wvpublic.org/section/education/2021-03-04/bill-creating-publicly-funded-education-savings-accounts-passes-w-va-heads-to-w-va-senate (quoting House Education Chair Del. Joe Ellington) ("'[T]here's more than one way to educate our students. This is just one small part to take that population of kids out that need a different environment to learn and excel.'").

August 4, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Elbert Lin, do hereby certify that the foregoing *Amicus Curiae Brief of Yes. Every Kid. Foundation in Support of Petitioner's Motion for Stay* has been served on counsel of record via the E-Filing System or, for those parties who are not capable of receiving electronic service, by email and by depositing a copy of the same in the United States Mail, via first-class postage prepaid, this the 4th day of August, 2022, addressed as follows:

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