Appeal No: 03-2415

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

SAMANTHA J. COMFORT, et al.,

Plaintiffs-Appellants,

vs.

LYNN SCHOOL COMMITTEE, et al.,

Defendants-Appellees.

On Appeal from a Judgment of
the United States District Court for
the District of Massachusetts

BRIEF OF AMICUS CURIAE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW IN SUPPORT OF DEFENDANTS-APPELLEES AND IN FAVOR OF AFFIRMANCE

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Gary Orfield & Chungmei Lee, *Brown* at 50: King's Dream or *Plessy's* Nightmare? (2004)..9, 15, 16, 17

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STATEMENT OF INTEREST

The Lawyers' Committee for Civil Rights Under the Law (the "Lawyers' Committee") is a tax exempt, nonprofit civil rights legal organization founded in 1963 at the request of President John F. Kennedy, to provide legal representation to the victims of civil rights violations. Its members include former Attorneys General, former Presidents of the American Bar Association, law school deans and professors, and many of the nation's leading lawyers. Over the last forty years, the Lawyers' Committee has represented members of minority groups and women in hundreds of civil rights cases. Among the essential interests of the Lawyers' Committee is the proper construction and implementation of programs to remedy racial discrimination and its effects and to ensure that all members of our society share in its institutions, opportunities, and benefits.

SOURCE OF AUTHORITY TO FILE

The Lawyers' Committee files this amicus brief pursuant to the assent of all parties to this case.

INTRODUCTION

This case involves the Massachusetts Racial Imbalance Act and its implementing regulations (the "Act" or the "RIA"), and the Lynn School Committee's Voluntary Plan for School Improvement and the Elimination of Racial Isolation (the "Lynn Plan"). The issue is whether the Act and the Lynn Plan

violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, Title VI of the Civil Rights Act, as well as various other federal statutes and Article 111 of the Massachusetts Constitution. The Act is a response to legislative findings that the state's public schools were experiencing dramatic racial isolation, negative educational effects, racial prejudice among students, inferior school facilities for minorities and inadequate preparation for life in the state's multicultural communities, all of which worked to create an educational crisis and emergency. Comfort v. Lynn, 283 F.Supp.2d 328, 342-43 (D. Mass. 2003). The Act encourages, but does not require, school districts to enact plans to reduce racial imbalances and provides additional funding to help implement the plans in districts that take such action. Id. The Lynn Plan guarantees that every student in Lynn can attend a school in his or her neighborhood, but a student can transfer to a different school if that transfer would be desegregative or have a neutral impact on the racial composition of the school to which the student is transferring. Id. at 347-48. The district court rejected all of plaintiffs' arguments and held that the non-remedial goals of the Lynn Plan -- inter alia, promoting racial and ethnic diversity and reducing racial isolation -- were compelling interests, and that in effectuating these goals, the Lynn Plan was tailored sufficiently narrowly to satisfy a strict scrutiny standard.[1]

[1] Although the trial court held that intermediate scrutiny was appropriate inasmuch

SUMMARY OF ARGUMENT

Amicus curiae respectfully urges this Court to affirm the district court's holding in all respects, but in the interest of space will only address whether reducing racial isolation and increasing racial diversity are compelling interests that justify the use of race. In the instant case, the evidence, social science research and precedent establish that reducing racial isolation and promoting curricular goals, which includes increasing racial diversity, are in fact compelling interests that justify the Act and Lynn Plan. In Grutter v. Bollinger, 539 U.S. 306, 327 (2003), the Supreme Court held that non-remedial purposes can be compelling interests. Moreover, in assessing whether educational institution's purposes are compelling, courts must give them the appropriate deference in light of their expertise as educators. Id. at 328. Consistent with the reasoning of Grutter, courts that have addressed the issue of whether reducing racial isolation in public schools is compelling have found that it is. In the instant case, defendants directly acted in furtherance of that same compelling interest. However, the reduction of racial isolation in Lynn was made even more compelling by the specific education inequities that it acted to correct, and which were as important, if not more so, than

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as it found that the Lynn Plan and the RIA do not favor members of one race over another, the trial court analyzed the plan and the statute pursuant to strict scrutiny. See Comfort, 283 F. Supp. 2d at 364-66.

those addressed in Grutter. In short, affirmance is necessary to equip states and school districts to implement measures needed to counteract the educationally harmful effects of racial isolation apart from and beyond those measures to end state-imposed segregation.

In addition, Lynn's curricular goals, which include increasing racial diversity, are a compelling interest for many of the same reasons that diversity was a compelling interest in Grutter. Social science research establishes several educational benefits of racial diversity in K-12. The evidence in the instant case also demonstrated that both the benefits and a resegregation threat to those benefits exist in Lynn. Thus, the Lynn Plan's furtherance of racial diversity is an interest as compelling, if not more so, than the one recognized in Grutter. Accordingly, this Court should affirm the district court's decision in this and all other respects.

ARGUMENT

I. REDUCING RACIAL ISOLATION AND PROMOTING STUDENT BODY DIVERSITY ARE COMPELLING STATE INTERESTS

A. Compelling State Interests Are Not Limited to Remedying Past Discrimination.

The Supreme Court in Grutter dispelled any notion that its past decisions prohibited the consideration of race for non-remedial purposes. 539 U.S. at 328. It held that non-remedial interests can serve a compelling state interest and justify the use of race. Id. Although the Court specifically ruled that "diversity" was a

compelling interest, it also implicitly recognized that other non-remedial governmental purposes could rise to the level of a compelling interest. Id. Thus, the important distinction for courts is not whether a government interest is remedial or non-remedial, but simply whether the government in fact "has a compelling interest." Id. The lower court here, consistent with Grutter, engaged in this exact inquiry. Comfort, 283 F.Supp.2d at 375-76, 384-86.

In making this inquiry in regard to educational institutions, the Court has also consistently found that the schools themselves are most often the best judges of what is necessary to deliver an effective education in their community or state and, thus, the courts owe them certain deference. Speaking of higher education, the Court has a "tradition of giving a degree of deference to . . . academic decisions, within constitutionally prescribed limits." Grutter, 539 U.S. at 328. Thus, in its compelling interest analysis, the Court deferred to the school's "educational judgment that . . . diversity is essential to its educational mission." Id. Although the Supreme Court has not specifically addressed this issue in the context in elementary and secondary schools, it has similarly given deference school districts in respect to several aspect of the operation of those schools, including First Amendment and curriculum choices, which were at the core of its deference in Grutter. See, e.g., Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 273 (1988) (granting the school discretion as to curricular issues in regard to the school

newspaper); Bethel Sch. Dist. v. Fraser, 478 U.S. 675, 685 (1986) (permitting the suppression of certain speech by the school); see also Veronia Sch. Dist. v. Acton, 515 U.S. 646, 664-65 (1995)(permitting random drug searches of students by the school to combat drug abuse); New Jersey v. T.L.O., 469 U.S. 325, 339-41 (1985) (relaxing probable cause requirements so as not to intrude on the school's functioning). In fact, the Court has recognized in dicta that, within this discretion, school districts could voluntarily take race conscious action to minimize racial segregation as an educational policy choice that even a federal court could not compel a district to take otherwise. Swann v. Charlotte-Mecklenburg Bd. Of Education, 402 U.S. 1, 16 (1971).

B. The Act and the Lynn Plan Serve the Compelling Interest of Reducing Racial Isolation.

In the instant case, defendants have asserted that the reduction of racial isolation is a goal of the Act and Lynn Plan. Moreover, the record shows this reduction is not being achieved for its own sake, but rather to combat the harmful and adverse educational effects that have resulted in the public schools, such as increased racial prejudice and polarization among all students, the lack of preparation to live in a multiracial society, and resource and teacher inadequacies at predominantly racial minority schools. Comfort, 283 F.Supp.2d at 342, 344-45. In Lynn, these harmful effects were increasing along with an increase in racial

isolation and, thus, creating an educational "crisis," whereby the school system was often unable to provide basic quality educational opportunities for minority students. Id. at 344. The school system responded with the Lynn Plan to reduce racial isolation and ameliorate its harmful education effects. In light of the forgoeing, the District Court found that the reduction of racial isolation "is indeed a compelling interest that can justify race-conscious student assignment." Id. at 386.

The only other courts that have addressed the issue of whether reducing racial isolation in public schools is a compelling interest have also found that it is. In Brewer v. W. Irondequoit Central Sch. Dist., 212 F.3d 738 (2d Cir. 2000), the Second Circuit held that "a compelling interest can be found in a program that has as its object the reduction of racial isolation and what appears to be de facto segregation."[2] Id. at 752 (emphasis in original). In so holding, it recognized prior Second Circuit precedent that reducing de facto segregation serves a compelling

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[2] Because plaintiffs in Brewer sought a preliminary injunction, in assessing the likelihood of plaintiffs' success on the merits, the district court applied strict scrutiny to the transfer policy and found that, even if defendants had a compelling interest in reducing racial isolation, the policy was not narrowly tailored to that interest. Brewer v. W. Irondequoit, 32 F.Supp.2d 619, 632 (W.D. N.Y. 1999). On appeal, the Second Circuit found that the district court had improperly characterized the goal of the policy as promoting "true diversity" rather than reducing racial isolation, it declined to rule as to whether the policy was narrowly tailored, and instead remanded the case to the district court for a full trial on a more fully developed factual record. Brewer, 212 F.3d at 752-53.

state interest. See Parent Ass'n of Andrew Jackson High School v. Ambach, 598 F. 2d 705, 717-21 (2d Cir. 1979) (preserving racial integration in schools and counteracting resegregative effects was sufficiently compelling to withstand strict scrutiny, and remanding for further fact finding); Parent Ass'n of Andrew Jackson High School v. Ambach, 738 F. 2d 574 (2d Cir. 1984) ("Andrew Jackson II") (reiterating the earlier holding "ensuring the continuation of relatively integrated schools for the maximum number of students" constitutes a compelling interest that can survive strict scrutiny). Thus, subject to further fact finding, the court in Brewer upheld a policy to reduce racial isolation that permitted "only minority pupils . . . to transfer from 'predominantly minority city schools' to participating suburban schools, and non-minority students [to] transfer from suburban schools to city schools provided that their transfers 'do not negatively affect the racial balance of the receiving school.'" 212 F.3d at 742.[3] Moreover, "if reducing racial isolation is -- standing alone -- a constitutionally permissible goal, as we have held it is . . . then there is no more effective means of achieving that goal than to base decisions on race." Id. Although the decisions above found reducing racial isolation can be a compelling interest even in the absence of factual development, the district court

[3] As with the Lynn Plan, the public school system in New York gives each student "only the right to attend the school in the district in which he or she lives." Id. at 746.

here had an extensive record of Lynn's interest in resolving and preventing racial isolation. Comfort, 283 F.Supp.2d at 344-47. Moreover, specific educational harms were avoided by reducing isolation here. Thus, the reasoning and support for the compelling interest is significantly stronger here.

It also bears noting that, as the above decisions suggest, the serious nature of racial isolation in public schools is not unique to Lynn, but rather racial isolation is a serious issue that confronts educators across the nation. National studies uniformly show schools are resegregating and becoming racially isolated, see, e.g., Gary Orfield & Chungmei Lee, *Brown* at 50: King's Dream or *Plessy's* Nightmare? 2, 4 (2004); John R. Logan, Choosing Segregation: Racial Imbalance in American Public Schools, 1990-2000 (2003), and whites are the most segregated group in this nation's public schools. Orfield & Lee, at 4. "Although whites make up two-thirds of the U.S. students in 2001, the typical white student attends a school where four out of five children (79%) are white." Id. at 16-17; see also Erica Frankenberg et al., Multiracial Society with Segregated Schools: Are We Losing the Dream? 30, 35 (2003). Minorities are similarly isolated, as, for instance, over 70 percent of black students attend predominately minority schools, defined as schools with 50-100% minority student populations. Frankenberg, at 31. In addition, a substantial group of American schools that are virtually all non-white and characterized by enormous poverty, limited resources, and social and

health problems of many types -- known as "apartheid schools" -- have emerged. Orfield & Lee, at 5. In total, "almost 2.4 million students, or over five percent of all public school enrollment, attend apartheid schools, defined as 99-100% minority schools." Id. Moreover, this resegregation and isolation is increasing each year. See Gary Orfield, Schools More Separate: Consequences of a Decade of Resegregation 2 (2001); Roslyn Arlin Mickelson, Achieving Equality of Educational Opportunity in the Wake of Judicial Retreat from Race Sensitive Remedies: Lessons from North Carolina, 52 Am. U.L. Rev. 1477, 1486-87 (2003). What makes Lynn unique, however, is its recognition of the harmful effects of this racial isolation and it understanding that it must take corrective action if it is to carry out its core educational mission.

In fact, the district court here had an arguably stronger basis for finding a compelling interest than did the Court in Grutter. As discussed above, the compelling interest in Grutter was established through deference to the school's educational judgment, but also through evidence that showed the educational benefits of diversity. 539 U.S. at 328-30. Although the district court also afforded the school the due deference here, such deference was far from necessary, as well documented inadequacies, disparities and problems were occurring in the schools as a result of racial isolation. Comfort, 283 F.Supp.2d at 344-47. Thus, the court need not have accepted the district's judgment on its face because the evidence

showed it was struggling to meet its core mission of educating its students. Moreover, while in Grutter, the university was seeking added benefits in educational outcomes, here the actions of the district were necessary to prevent actual harms to the educational opportunities of students. As the lower court found, the "Lynn officials were obliged to take responsibility for addressing these adverse consequences." Comfort, 283 F.Supp.2d at 384. In fact, these harmful effects were preventing or would prevent the schools from meeting their most basic of purposes: providing a quality, equitable education to all its students. Conversely, in Grutter, there was no suggestion that the university would not have been able to provide an equitable or quality education to all its students, but rather only that the actions were needed to provide optimum institution. 539 U.S. at 328-33. It is also important to note that the Court in Grutter did not frame the issue of compelling interest as whether the interest was an absolute necessity, but rather the threshold was only whether the interest was sufficiently important or more specifically whether it was "essential to [the school's] educational mission." Id. at 328. In Lynn, the evidence shows reducing racial isolation was not only essential to its mission, but its ability to carry out its mission was in jeopardy absent such action. In short, the district court here was correct in finding that the Act and Lynn Plan served a compelling government interest and in doing so reached a decision consistent with, if not mandated by, precedent.

C. The Lynn Plan Serves the Compelling Interest of Several Curricular Goals, Including Diversity.

The Lynn Plan also serves several educational curriculum or quality goals, including diversity, which are closely related to reducing racial isolation, although different. Both reducing racial isolation and increasing racial diversity are means to producing the same or similar educational ends and, thus, diversity is a compelling interest in Lynn for all of the reasons stated above in regard to racial isolation. However, Lynn's curricular goals, including diversity, produce additional educational benefits that also reinforce diversity as a compelling interest. The Lynn Plan furthers diversity through its transfer program, but also through curricular offerings on race relations and by training students and teachers on diversity. Comfort, 283 F.Supp.2d at 376. These transfers are necessary to the curricular interest because the there is no effect if the schools themselves are not diverse and aligned with the curriculum. Id. at 376-77. The purpose of these actions was to combat the racial tensions in the school district, which were poised to increase, and to meet the educational mission of preparing students to be good citizens in their diverse society. Id. Thus, the District Court found that diversity was a compelling interest that justified the use of race in Lynn.

The Supreme Court in Grutter held "student body diversity is a compelling state interest that can justify the use of race in university admissions." 539 U.S. at 325. In reaching this conclusion, the Court recognized that "numerous expert studies and reports show that such diversity promotes learning outcomes, and better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals." Id. at 330. The studies and reports cited by the Supreme Court are part of a growing and essentially uncontroverted body of scholarship on the advantages of a racially diverse education that identifies at least three distinct benefits of an integrated classroom: (1) enhanced learning; (2) higher educational and occupational aspirations; and (3) positive social interaction among members of different racial and ethic backgrounds. Frankenberg, at 12-14; see also Expert Report of Patricia Gurin, at 1 (cited in Gratz v. Bollinger, 135 F. Supp. 2d 790 (E.D. Mich. 2001) and Grutter v. Bollinger, 137 F. Supp. 2d 874 (E.D. Mich. 2001)). The Court, however, did not address diversity in elementary and secondary schools. Yet prior to and consistent with Grutter, circuits, including this one, have either found or assumed that diversity or the consideration of race to produce diverse learning environments is a compelling interest in K-12. Hunter v. Regents of Univ. of Cal., 190 F.3d 1061, 1067 (9th Cir. 1999); Wessmann v. Gittens, 160 F.3d 790, 796 (1st Cir. 1998); Eisenberg v. Montogomery Co., 197 F.3d 123, 130 (1999); Tuttle v. Arlington Co.,195 F.3d 698, 701 (4th Cir. 1999).

Moreover, extensive social science research shows that positive educational benefits, similar to those recognized in Grutter, result from racial diversity and desegregation in K-12 instruction. Thus, the same type of evidence that established diversity as a compelling interest in higher education exists in regard to K-12. In addition, the evidence in the instant case showed the benefits of diversity in Lynn and established it is a compelling interest that justifies the use of race.

i. Social Science Evidence Demonstrates That Racial Diversity in K-12 Results in Enhanced Learning for Students

Regardless of race, "by exposing students to multiple perspectives, students learn to think more critically and to understand more complex issues." Civil Rights Project, Harvard University, The Impact of Racial and Ethnic Diversity 3 (2002). In addition, "research shows that students of color who attend more integrated schools enjoy increased academic achievement levels and higher test scores especially if students attend desegregated schools at an early age." John Powell, An "Integrated" Theory of Integrated Education 7; see also A.S. Wells & R.L. Crain, Perpetuation Theory and the Long Term Effects of School Desegregation, REVIEW OF EDUCATIONAL RESEARCH, 64 (4): 531-55 (1994) (attributing the achievement increase to opportunities or informal networks available to children at such schools, the latter of which would not be available at even the best segregated school with the most resources); V.W. Ipka, At Risk

Children in Resegregated Schools: An Analysis of the Achievement Gap, 30 JOURNAL OF INSTRUCTIONAL PSYCHOLOGY 294, 299 (Dec. 1, 2003) (citation omitted) ("The findings further suggest that children attending racially-integrated schools perform better than their segregated counterparts."). In fact, the desegregation era is often credited for reducing the achievement gap between white and minority students. Comfort, 283 F. Supp. 2d at 355, 355 n.52. During the 1960s, 70s and 80s, the research shows that minority students who attended more integrated schools -- particularly those who attended at an early age -- enjoyed increased academic performance despite the fact that poverty, single parent families, and unemployment worsened during the same period. Id. Yet increased racial isolation during the 1990s has begun to erode the gains made during the 1980s in reducing the achievement gap. Id. Racially diverse environments, however, can prevent this erosion. Analysis of multiple studies demonstrates "that interracial exposure in K-12 education can help break the perpetual cycles of educational and occupational segregation that result from segregated access to information by blacks and Latinos." Frankenberg, at 3.

ii Social Science Evidence Demonstrates That Racial Diversity in K-12 Results in Higher Educational and Occupational Aspirations

Studies also show that students in racially diverse schools have higher aspirations for themselves both while in school and after graduation. See Orfield

& Lee, at 24. Research consistently shows that desegregated education has a positive effect on both the number of years of school students complete and on the probability of students attending college. Id. "Consequently, attending a more desegregated school translates into higher goals for future educational attainment and career choices, increased awareness of the steps need to obtain these goals, and enhanced social networks." Powell, at 10. In addition, "improving economic and educational opportunities for one generation of minority individuals raises the socioeconomic status of the next generation, so that those who follow are more apt to begin school at the same starting point as their non-minority classmates." Id. (citing William T. Trent, Outcomes of School Desegregation: Findings From Longitudinal Research, 66 J. OF NEGRO ED. 255-57 (1997)). Although the literature focuses heavily on the historical benefits of desegregation to African American students, a recent study, employing a nationally representative sample, found that "both black and white students who had cross-race friendships had higher educational aspirations than those with same-race friendships." Orfield & Lee, at 24.

iii. Social Science Evidence Demonstrates That Racial Diversity in K-12 Results in Social Benefits for Students

In addition to increased academic success and higher personal aspirations, studies overwhelmingly conclude that diversity promotes racial tolerance and

interaction among different racial groups later in life. See, e.g., Orfield & Lee, at 25 (reviewing twenty-one other studies assessing the effect of diversity in education on later racial tolerance and interaction). In fact, both black and white students who attend racially integrated schools are more likely to function in desegregated settings later in life, including in workplaces, neighborhoods, and colleges and universities. Id. Recent studies focusing on the attitudes of students towards peers with different racial backgrounds all concluded that "students -- of all racial/ethnic groups -- who attend more diverse schools have higher comfort levels with members of racial groups different than their own, an increased sense of civic engagement and a greater desire to live and work in multiracial settings relative to their more segregated peers." Id.

iv. Evidence of the Educational Benefits of Diversity in Lynn Rise to the Level of a Compelling Interest.

As discussed above, the Supreme Court has recognized diversity as a compelling interest in higher education and other courts have either assumed or found diversity to be a compelling interest in K-12. As in Grutter, the social science evidence alone establishes the benefits of diversity in K-12 and, thus, would establish a compelling interest. However, in addition, there is undisputed and documented evidence of the positive effects of the curricular goals, including diversity, in the Lynn schools. Defendants presented "evidence of significant

improvements" in the schools as a result of its curricular goals, including diversity, and plaintiffs even conceded the "schools are considerably better and safer than they were before the Plan." Comfort, 283 F.Supp.2d at 376. Moreover, extensive expert testimony corroborated these benefits as well as others. Id. at 353-58. As in Grutter, the benefits of diversity were established by evidence and "these benefits are substantial." 539 U.S. at 333. Thus, notwithstanding the compelling social science evidence, the educational benefits of diversity are established here.

In addition, prior to the Lynn Plan, racial isolation was occurring in Lynn, Massachusetts. Comfort, 283 F. Supp.2d at 345-47. Consequently, Lynn's students were also being denied access to the type of racially diverse environment that would provide the numerous educational benefits described above. Consequently, the Lynn Plan was enacted as a corrective measure. Without such action, Lynn mostly likely would have continued on a path of intense resegregation, as described above in schools across the nation. It would have then been unable to meet its core mission of delivering a quality education and "teaching citizenship." Id. at 375. Thus, as a corrective measure and in light of the extensive social science research detailing the educational benefits of this action and the evidence of the concrete benefits that have occurred in Lynn, achieving diversity is a compelling interest that justifies the use of race here. In Grutter, the Court reiterated that "nothing less than the 'nation's future depends upon leaders

trained through wide exposure' to the ideas and mores of students as diverse as this Nation of many peoples." 539 U.S. at 329. As demonstrated above, in Lynn nothing less the ability of the schools to deliver an equitable and quality education depended on the action it took to increase racial diversity in its schools before it became non-existent as a result of resegregative forces in its district.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in greater detail in Appellees' papers, Amicus Curiae respectfully requests that this Court affirm the lower court's decision in all respects.

Dated: June 9, 2004

Respectfully submitted,

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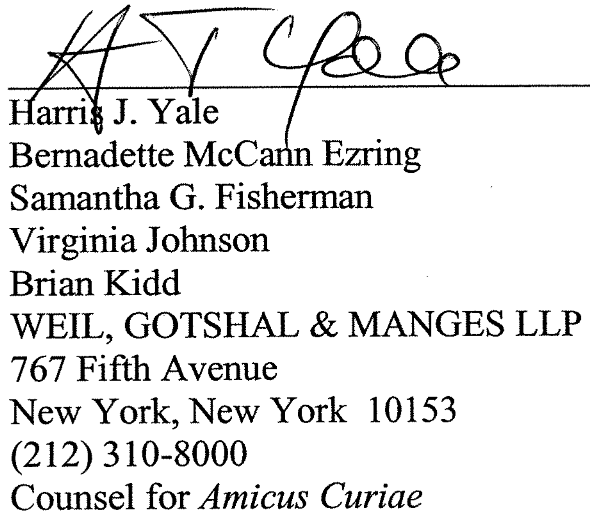

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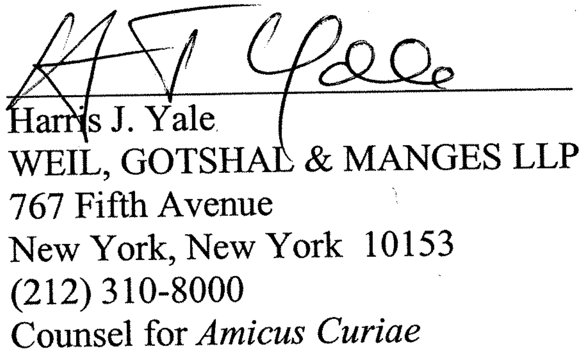

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