

IN THE SUPREME COURT OF GEORGIA

GWINNETT COUNTY SCHOOL DISTRICT, ET AL.,

Appellants,

v.

KATHY COX, ET AL.,

Appellees.

CASE NO. S10A1773

**AMICUS CURIAE BRIEF OF BLACK ALLIANCE FOR EDUCATIONAL
OPTIONS IN SUPPORT OF APPELLEE CHARTER SCHOOL PARTIES**

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Pursuant to Supreme Court of Georgia Rule 23, Amicus Curiae Black Alliance for Educational Options (“BAEO”) files this brief in support of the Appellee Charter School Parties’ Motion for Reconsideration and respectfully requests that this Court reconsider its May 16, 2011 decision.

I. STATEMENT OF INTEREST OF AMICUS CURIAE.

BAEO is a nonprofit, intergenerational organization of educators, parents, students, community activists, public officials, religious leaders, and business people founded in December 2000. BAEO is committed to improving educational opportunities available to minority and low-income children throughout the United States by supporting parental choice as a means of empowering families and increasing educational options for black and other children living in depressed

neighborhoods. BAEO believes that the American ideal of equal opportunity is unattainable for economically disadvantaged black children so long as they continue to lack access to educational opportunities that will allow them to close the widening gap between their academic achievement and that of white children.

BAEO is staunch in its belief that parental choice must be an integral part of any serious effort to reform education in America. BAEO firmly believes parental choice programs, which lead to the creation of quality educational options, not only rescue the children who can take advantage of such opportunities but also create powerful incentives for all schools, public and private, to improve. These twin measures of opportunity and improvement provide broad social and economic benefits for the children and families involved and for the entire community as well.

BAEO's Board of Directors includes noted attorney, author and national school reform leader Kevin Chavous; Mayor of Newark, New Jersey Cory Booker; and Georgia State Representative Alisha Thomas Morgan. The Honorable Rod Paige, who served as Secretary of Education under President George W. Bush, serves on BAEO's Advisory Board.

With a grant provided by the Gates Foundation, BAEO spurred the creation of five small project-based high schools that are proving the efficacy of smaller

high schools, project-based learning, and parental choice. The schools are located in Philadelphia, Milwaukee, and Baton Rouge.

II. THIS COURT SHOULD RECONSIDER ITS DECISION AND AFFIRM THE TRIAL COURT'S ORDER.

Fifty-seven years ago, almost to the day from this Court's decision, Chief Justice Earl Warren extolled the virtues of public education:

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

Brown v. Bd. of Educ. of Topeka, 347 U.S. 483, 493, 74 S. Ct. 686, 691 (1954).

Chief Justice Warren's comments remain just as true today as they were in 1954.

It is our obligation as a society to ensure that each child, whether rich or poor, rural or urban, minority or white, obtains an education that will provide the foundation for success in any path that student chooses.

In striking down the Charter Schools Commission Act (O.C.G.A. § 20-2-2081, *et seq.*) (“the Act”), the Majority relies upon the premise that “local boards of education have the exclusive authority to fulfill one of the ‘primary obligation[s] of the State of Georgia,’ namely, ‘[t]he provision of an adequate public education for the citizens.’” (Majority Opinion, at 3) (quoting Art. VII, Sec. I, Par. I). The Majority’s premise conflicts with both the clear words of the current Constitution and the history of education in Georgia. In this respect, BAEO relies upon the briefs of the Appellee Charter School Parties and others.

What the Majority opinion ignores, and what the legislators who enacted the Act understand and appreciate, is that Georgia’s current education system does not work for all students, and public education is improved when students and parents are given realistic options. Nothing could be further from this norm than the Majority’s “one size fits all” holding that local school districts have a monopoly on public education. In Georgia, however, the people have determined that public education should not be a monopoly, and accordingly have ratified a state constitution giving the State the power to create “special schools,” and, through their elected representatives, enacted the Commission Charter School Act.

When given the chance to succeed, students at charter schools perform as well as or better than their peers in local school districts. In the most recent data

available, 80% of charter schools¹ met the State's Adequate Yearly Progress proficiency and achievement goals,² compared to a state rate of 77%.³ Charter schools also achieved an 80% graduation rate.⁴ Students at Ivy Preparatory Academy continue their outstanding academic achievement: 91.5% met or exceeded state goals on the math portion of the Criterion Referenced Competency Test and 100% met or exceeded state goals for reading.⁵ Ivy Prep has become so popular because of its success that the school uses a lottery for admission and a waiting list for those who are not admitted initially.⁶

The Majority opinion, if left undisturbed, will have a profound impact on minority and poor students. Forty-two percent of the students in commission

¹ Included are local charter, state chartered special schools, and commission schools.

² 2009-2010 Annual Report on Georgia's Charter Schools, prepared by Georgia Department of Education, p. ii, available at <http://doe.k12.ga.us/DMGetDocument.aspx/20092010GDOECharterSchoolsAnnualReport.pdf?p=6CC6799F8C1371F63EB1746642AC4C6753DC668ABDE1C735E99FDE6E62868F7C&Type=D>

³ *Id.* at page x.

⁴ *Id.*

⁵ *Id.* at page 76.

⁶ *Id.*

charter schools are African-American and more than 3.2% are other minorities.⁷

Ninety-five percent of the students at Ivy Prep are minorities, and 75% of the students are African-American.⁸ Fifty-six percent of all commission charter students are on the “free or reduced lunch” program. Forty-one percent of Ivy Prep students and 45.6% of CCAT students qualify for free or reduced lunch.⁹ These are the students to whom Chief Justice Warren referred, who deserve the chance to continue succeeding in their charter schools but will be forced by the Majority decision to return to the very schools that failed them in the first instance.

III. CONCLUSION.

BAEO is committed to school choice because BAEO recognizes that local school districts do not necessarily work for all students and students should be given an option to select the school that best meets the student’s needs. By declaring the Act unconstitutional, however, the Majority has removed the choice from thousands of students, many of whom are minorities or economically disadvantaged. As Chief Justice Warren warned, “It is doubtful that any child may

⁷ Georgia Department of Education “Enrollment by Race/Ethnicity, Gender and Grade Level (PK-12),” available at http://app3.doe.k12.ga.us/ows-bin/owa/fte_pack_ethnicsex.entry_form

⁸ *Id.*

⁹ Georgia Department of Education “Free & Reduced Price Lunch Eligibility,” available at http://app3.doe.k12.ga.us/ows-bin/owa/fte_pack_frl001_public.entry_form.

reasonably be expected to succeed in life if he is denied the opportunity of an education.” For these reasons, this Court should reconsider its May 16, 2011 decision, vacate that decision and affirm the trial court’s order.

Respectfully submitted, this 27th day of May, 2011.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served opposing counsel of the within and foregoing **AMICUS CURIAE BRIEF OF BLACK ALLIANCE FOR EDUCATIONAL OPTIONS IN SUPPORT OF APPELLEE CHARTER SCHOOL PARTIES** by depositing copy of same in the U.S. Mail with adequate postage affixed and addressed as follows:

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