No. F062334

COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

LINDA A. SQUILLACOTE,

Plaintiff and Appellant,

v.

RIDGECREST CHARTER SCHOOL,

Defendant and Respondent.

Appeal from a Judgment
Of the Superior Court, County of Kern, No. S-1500-CV-268187-SPC
Hon. Sidney P. Chapin, Judge

APPLICATION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF OF AMICUS CURIAE SUPPORTING RESPONDENT

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APPLICATION TO FILE BRIEF AS AMICUS CURIAE

The California Charter Schools Association (CCSA) applies for leave to file a brief as amicus curiae in support of Respondent Ridgecrest Charter School (Ridgecrest). CCSA respectfully requests the court to allow the late filing of the 11 page brief that follows this application pursuant to California Rules of Court, rule 8.200(c)(1). Good cause exists to receive the brief. Despite CCSA's best efforts, it was unable to submit this brief by the October 31, 2011 deadline because of the workload of its in-house legal team. Outside counsel was unaware of this case until alerted by CCSA's in-house team and could not participate in preparing the brief earlier because of deadlines in appellate work for other clients. Given the delay in filing, CCSA has focused its brief narrowly on two issues as to which CCSA adds valuable background without delaying the proceedings or impairing the interests of judicial economy.

CCSA is a nonprofit public charter school membership and professional organization. CCSA's member schools are charter public schools dedicated to innovation and educating public school students more effectively than district-run schools. Over 900 public charter schools in the State of California currently serve more than 350,000 students. Approximately 72 percent of California's public charter schools are CCSA members, educating over 286,000 public charter school pupils annually. CCSA advances the charter school movement by providing state and local

advocacy, leadership on school quality, and operational and support services to its member schools.

CCSA and its members have an interest in this matter, congruent with Ridgecrest's but independently important. This brief raises just two points that CCSA develops beyond the perspective presented by Ridgecrest. Those points are as follows:

(i) The law provides public school teachers with a valuable opportunity *and choice* to work at a charter school; as with virtually all choices in human experience, selecting a charter school rather than a district school has both benefits and detriments.

(ii) The Legislature was fully aware when it passed the bill containing Education Code section 47610 that the statute exempted charter schools from the employment rules imposed on district schools.

This court's decision will affect all charter schools in California that hire at-will employees. Those schools now operate with the understanding they are exempt from the employment laws that govern district schools. A decision to the contrary would alter the very nature of charter schools and undermine the benefits they inject into the public school system.

No party or counsel for a party in this appeal authored the proposed amicus curiae brief in whole or in part, or made a monetary contribution intended to fund the preparation or submission of the proposed amicus curiae brief. No one other than CCSA, its members and counsel made a

monetary contribution intended to fund the preparation or submission of the proposed amicus curiae brief.

Respectfully submitted,

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BRIEF OF AMICUS CURIAE

INTRODUCTION

The Charter Schools Act, beginning at Education Code section 47600 (the Act) created new opportunities for communities, students, parents and teachers to establish schools that meet the unique needs of communities or disadvantaged students. Included among the opportunities for teachers is the ability to create—or choose to work at—new, independent schools at which they can be responsible for the educational program, use different and innovative teaching methods, and, ultimately, compete with district schools. In exchange for these new freedoms, teachers could be asked to give up the rule-based employment processes imposed on school districts for teachers in district operated schools.

Appellant seeks to undermine the cornerstone of what makes charter schools successful and different from district schools by nullifying Education Code section 47610—the so-called megawaiver—that provides charter schools with the freedom to develop and create new schools, and to inject educational options and beneficial competition into the public school system. This freedom to be different is what the Legislature intended. It must be upheld to allow charter school communities to develop educational

programs that meet their students' unique needs and continue to operate outside the existing school district structure.

DISCUSSION

I.

FREEDOM FROM STATUTORILY IMPOSED TEACHER EMPLOYMENT PRACTICES IS ESSENTIAL TO THE EDUCATION REFORM MISSION OF PUBLIC CHARTER SCHOOLS

A core purpose of the Act is to "disrupt entrenchment of . . . educational bureaucracy by encouraging the establishment of charter schools." (*Wilson v. State Bd. of Education* (1999) 75 Cal.App.4th 1125, 1130.) The Act created many new opportunities in exchange for greater accountability, trusting that the broader education community could rise to the challenge. A key purpose of the Act is "to provide opportunities for *teachers*, parents, pupils, and community members to establish and maintain schools that operate independently from the existing school district structure." (Ed. Code, § 47601, emphasis added.)

An express goal of introducing charter schools into public education was to "create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the schoolsite." (Ed. Code, § 47601, subd. (d).) The Legislature expressly empowered teachers to form their own schools, by either converting existing district schools or creating new schools. (Ed. Code, § 47605, subd. (a).)

The Legislature recognized that some teachers would not want to take advantage of the opportunities offered by the Act. Addressing this concern, it included Education Code section 47605, subdivision (e) to ensure that no school district employee could be compelled to work at a charter school. (Ed. Code, § 47605, subd. (e).) The full importance of this language is lost unless it is read in contrast to the laws governing district operated schools, which give the school district authority to control the assignment of teachers to a particular school site within the district. (See, e.g., *Thompson v. Modesto City High School Dist.* (1977) 19 Cal.3d 620, 623.) Teachers who work in district schools have no direct voice in management and little to no choice about their school assignment.

Appellant's suggestion that a credentialed school teacher is not capable of making an informed choice when accepting employment at a charter school (see ARB p. 22 ["the [Charter Schools Act] sets a classic trap for the unwary"] is contrary to the Legislature's view. The Legislature recognized that founders of charter schools (including teachers) had the capacity to make informed decisions around employing the right staff to accomplish its stated goals, by providing alternatives to the district system. A charter school may choose to bargain directly with any potential union or to accept the local district's collective bargaining agreement. (Ed. Code, § 47611.5 subd. (b).) It may also choose to adopt statutes and regulations governing public school employment, or to negotiate terms of discipline

and dismissal directly. (Ed. Code, § 47611.5, subd. (c).) In this case, Ridgecrest elected to be the public school employer and did not choose to comply with the statues and regulations governing public school employers under Education Code section 47611.5, subdivision (c). (See Respondent's Request for Judicial Notice, Attachment 1, p. 3.).)

By allowing charter schools the ability to opt out of the existing district collective bargaining rules, and the statutes and regulations governing public school employers, the Legislature recognized that flexibility in employment practices could contribute toward achieving a charter school's educational goals, and the ultimate success of the public school students. Ridgecrest is a good example of how charter schools can meet academic goals—the school repeatedly has exceeded the state's academic performance goal of 800 on the Academic Performance Index ("API"), most recently achieving a score of 825, and has obtained two charter renewals by its authorizer, the State Board of Education. (http://snapshots.calcharters.org/academic_accountability_report_card)

With the freedom bestowed on charter schools comes some risk, not just to teachers, but to the entire charter school community—failure by a charter school to meet the academic, fiscal and other goals set forth in its charter petition can result in the school's closure at any point in its five-year term. (See Ed. Code, § 47607.) In addition, families make a choice to enroll their children in charter schools. (See Ed. Code § 47605,

subd. (f).) Charter schools are held to high standards of accountability by those parents as a result of their ability to remove their children if they are dissatisfied.

For all of these reasons, charter schools need freedom from the statutory and regulatory rules applicable to district school employment so they can meet their important goals and to continue to operate. Any review of the district school mandatory employment practices that appellant seeks to apply demonstrates the layers of bureaucracy and increased costs that would burden charter schools. (Ed. Code, §§ 44830, et seq.; see *Firing Tenured Teachers Can Be a Costly and Tortuous Path* (Los Angeles Times, May 3, 2009 http://www.latimes.com/news/local/la-me-teachers3-2009may03,0,679507.story.) A charter school could have great difficulty accomplishing its academic goals (and retaining its students) if it did not have the freedom to swiftly address situations such as those that occurred in this case, which appellant sets forth in the record at volume 3, pages 542-545.

As President Obama has indicated in regard to education reform: "One of the places where much of that innovation occurs is in our most effective charter schools. And these are public schools founded by parents, teachers, and civic or community organizations with broad leeway to innovate . . . . ." (Barack Obama, President of the United States, address to the United States Hispanic Chamber of Commerce, March 10, 2009;

http://www.whitehouse.gov/the-press-office/remarks-president-united-states-hispanic-chamber-commerce.)

The cornerstone of charter school innovation is freedom from the burdensome, costly and time-consuming rules that bind district schools. Central to this freedom is the ability to hire teachers on a truly at-will basis with the attendant ability to dismiss a teacher under factual circumstances like those that occurred here. This flexibility to make prompt employment decisions is essential if charter schools are to be empowered to achieve the educational and academic goals they set.

II.

EDUCATION CODE SECTION 47610 MUST BE CONSTRUED TO FURTHER THE LEGISLATURE'S INTENT

CCSA concurs with Ridgecrest's assertion that the plain meaning of Education Code section 47610 renders charter schools exempt from the Education Code provisions at issue in this case. (RB, p. 14.) But in addition to Ridgecrest's discussion, CCSA shows the Legislature fully understood and intended the megawaiver to have the exempting effect stated in section 47610's words. Further, any interpretation suggesting that section 47610 applies district school teacher dismissal rules to charter schools would render the statute meaningless—a result that violates maxims of statutory interpretation.

A. Contemporaneous Evidence of Legislative Intent Confirms Section 47610 Exempts Charter Schools from District School Teacher Dismissal Rules

The Act derives from Senate Bill 1448 of the 1991-1992 Regular Session (SB 1448). (27C West's Ann. Ed. Code (2006) foll. § 47600, p. 303.) SB 1448 had an unusual history. The Legislature sent it and a competing charter schools bill—Assembly Bill 2585 of the 1991-1992 Regular Session (AB 2585)—to the Governor for signature simultaneously. (Governor's Signing Press Release for SB 1448, Sept. 21, 1992, Motion for Judicial Notice (MJN) Tab 12, p. 21.) The Governor picked SB 1448 precisely because under it "charter schools will be exempt from most bureaucratic laws pertaining to school districts. Schools will instead be governed by their charter." (*Ibid.*) He vetoed competing AB 2585 because it hamstrung charter schools with state mandated employee regulations, including collective bargaining with the district teacher's union. (*Id.* at p. 22; Governor's Veto Message, AB 2585, Sept. 21, 1992, MJN Tab 12, p. 23.) The Governor's message explicitly criticized AB 2585 for requiring teacher union approval of charter schools and "continuation of elaborate collective bargaining processes. . . ." (Governor's Veto Message, *id.* at p. 23.)

The Legislature knew exactly what SB 1448 meant. During the legislative process, two major newspapers editorialized in favor of SB 1448 and against AB 2585 exactly because the former did *not* and the latter *did*

impose statutory employment practices on charter schools. (*The Charter School Alternative*, The Sacramento Bee (Feb. 18, 1992), MJN Tab 3, p. 3; *Charter school alternative*, The Sacramento Bee Final (Sept. 11, 1992), p. B8, MJN Tab 1, p. 1; *Charting the Way to Better Schools*, The San Francisco Chronicle (Sept. 16, 1992) MJN Tab 2, p. 2.) The author of SB 1448, who was chair of the Senate Education Committee explained in a contemporary publication that its purposes included creating schools "without the constraints of traditional, oftentimes cumbersome, public school bureaucratic rules and structure." (Hart, Gary K., *Liberate the system*, Cal. School Boards J. (Spring 1992), MJN Tab 4, p. 4.)

Teachers unions opposed SB 1448 because it would provide charter schools the very flexibility appellant would deny them. The California Teachers Association opposed SB 1448 because it would provide a "blanket exemption for charter schools of virtually all Education Code provisions and State Department rules and regulations." (Cal. Teachers Assn. Legislative Advocate Ernest F. Ciarrocche letter to Assem. Mem. John Vasconcellos re SB 1448 (July 28, 1992), MJN Tab 6, p. 7; see Assem. Com. on Ways & Means, Republican Analysis of SB 1448 (Aug. 5, 1992), MJN Tab 11, p. 21 [presenting union's position].) The San Bernardino Teachers Association opposed the bill because "It would also undermine employee rights such as the right to due process." (San Bernardino Teachers Assn. Memo. to Senate Education Committee re SB

1448 (Apr. 10, 1992), MJN Tab 7, p. 8.) The California Federation of Teachers chimed in similarly. (Cal. Fed. of Teachers Legislative Director Judith A. Michaels letter to Sen. Gary Hart re SB 1448 (Mar. 27, 1997), MJN Tab 8, p. 9.) Other documents from the legislative files consistently express the broad meaning of the exemption. (See MJN Tabs 5, 9, 10, pp. 5-6, 11-15, 16-19.)

The Legislature knew exactly what Education Code section 47610 meant. It passed to the Governor the choice between section 47610 and a watered down charter schools bill. The Governor chose SB 1448. Legislative history confirms the text of section 47610: charter schools are exempt from teacher employment law imposed on district schools.

Later legislative action reconfirms the Legislature understood the megawaiver. The Legislature has limited Education Code section 47610 four times to apply precise district school statutes to charter schools. (Stats. 1996, ch. 786, § 5, p. 4151; Stats. 1998, ch. 34, § 10, p. 200; Stats. 2005, ch. 87, § 1; Stats. 2006, ch. 538, § 110.) Those amendments would have been unnecessary if appellant was correct.

B. Appellant's Construction Would Render Section 47610 Meaningless

Appellant claims the court must harmonize Education Code section 47610 with employment regulations beginning with Education Code section 44830 in order interpret the section 47610. Nothing in the Act

suggests such a process is necessary. Rather, appellant improperly seeks judicial nullification of the megawaiver. When construing a statute, "[c]ourts must avoid nullifying one statute in favor of another when attempting to harmonize related provisions." (*Gately v. Cloverdale Unified School Dist.* (2008) 156 Cal.App.4th 487, 494 [distinguishing *Tucker v. Grossmont Union High School Dist.* (2009) 168 Cal.App.4th 640].) The fact that two statutes are about schools does not mean they need to be harmonized, particularly when the Act is exclusively about charter schools and the employment statutes do not purport to regulate charter schools. And appellant's theory of harmonizing is better described as eviscerating. Under appellant's interpretation both section 47610 and Education Code section 47611.5, subdivision (c) become meaningless, and the interpretation would nullify the stated purpose of the Act to create schools that operate outside the school district structure.

Finally, appellant's equal protection argument neither has any force in constitutional law nor suggests how the Act should be interpreted. Neither district school teachers (the AOB's proposed class) nor charter school teachers (the ARB's proposed class) constitute a protected class, so the rational basis test applies. And the Legislature had more than one rational basis to create schools in which the teachers who *choose* to serve are subject to the school's charter and contractual employment practices, not the practices imposed by statute on district operated schools.

CONCLUSION

In order to protect the integrity of the Act and the operations of the over 900 charter schools throughout the state, the trial court's judgment based on sustaining respondent's demurrer should be affirmed.

Respectfully submitted,

LUCE, FORWARD, HAMILTON & SCRIPPS, LLP

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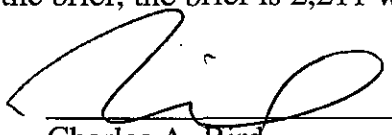
CERTIFICATE OF COMPLIANCE

I, Charles A. Bird, appellate counsel to respondents, certify that the foregoing brief of amicus curiae is prepared in proportionally spaced Times New Roman 13 point type and, based on the word count of the word processing system used to prepare the brief, the brief is 2,211 words long.



Charles A. Bird

I, Leisa Bitting, declare as follows: I am employed with the law firm of Luce, Forward, Hamilton & Scripps LLP, whose address is 600 West Broadway, Suite 2600, San Diego, California 92101-3372. I am over the age of eighteen years, and am not a party to this action. On **November 14, 2011**, I served the foregoing document described as:

APPLICATION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF OF AMICUS CURIAE SUPPORTING RESPONDENT

[X] **U. S. MAIL:** I placed a copy in a separate envelope, with postage fully prepaid, for each addressee named below for collection and mailing on the below indicated day following the ordinary business practices at Luce, Forward, Hamilton & Scripps LLP. I certify I am familiar with the ordinary business practices of my place of employment with regard to collection for mailing with the United States Postal Service. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit or mailing affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Diego, California on **November 14, 2011**.

Leisa Bitting

Leisa Bitting

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