GWINNETT COUNTY SCHOOL DISTRICT, ET AL.,

Appellants,

v.

KATHY COX, ET AL.,

Appellees.

CASE NO. S10A1773

AMICUS CURIAE BRIEF OF GEORGIA CHAMBER OF COMMERCE

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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 GEORGIA CHAMBER OF COMMERCE IN SUPPORT OF CHARTER SCHOOL APPELLEES' MOTIONS FOR RECONSIDERATION

The Georgia Chamber of Commerce ("Georgia Chamber") files this brief, pursuant to Rule 23 of the Georgia Supreme Court Rules, in support of the Appellees' motions urging this Honorable Court to reconsider its May 16, 2011 decision holding the Charter Schools Commission Act (Georgia Code Section 20-2-2081) facially unconstitutional.

I. INTEREST OF AMICUS CURIAE

The Georgia Chamber serves the unified interests of its thousands of members: small businesses to Fortune 500 corporations and the millions of Georgians they employ in a diverse range of industries across all of Georgia's 159 counties in Georgia. A particularly important function of the Georgia Chamber is advocacy – before all branches of government – that supports interpretations,

regulations and legislation that enhance the State's ability to attract and maintain successful businesses.

As an early and ardent supporter of charter schools, the Georgia Chamber is concerned with the Majority's conclusion in this case. But as importantly, the Georgia Chamber is even more troubled with the constitutional analysis the Majority used to reach its decision. The Court's reasoning minimizes predictability in the law by reversing well-settled precedent to value remarks made in a legislative committee over the Constitution's text. The focus on such statements represents a new type of analysis for this Court, and it renders the constitutionality of many Georgia laws unsettled and unpredictable.

In addition, the Georgia Chamber believes the Georgia Charter School Commission Act (the "Commission Act") is constitutional and sound policy. Commission charter schools improve the quality of the State's public elementary and secondary education, which impacts the quality of the future workforce and the desirability of Georgia as a business venue. The Court's May 16, 2011 decision striking the Commission Act as unconstitutional, and thereby crippling the Georgia Charter Schools Commission (the "Commission"), will obstruct education reform, a vital policy initiative supported by the Georgia Chamber.

Thus, the impact of the Court's striking the Commission Act and abolishing the Commission will extend beyond the over 15,000 students who attend

Commission schools, beyond the thousands more who plan to attend Commission schools scheduled to open for the 2011-2012 school year, and indeed, beyond education. Georgia's business community, and hence the commercial economic vitality of the State, will suffer if the Commission is abolished and if the Court adheres to the legal analysis it employed. The Georgia Chamber believes that these factors should weigh in the Court's decision on the motions for reconsideration, and the Georgia Chamber respectfully urges the Court to reverse its decision, affirm the trial court and uphold the Georgia Charter Schools Commission statute as a proper act of the General Assembly.

II. FACTUAL BACKGROUND

The Georgia Chamber adopts the Factual Background set forth in the Motion for Reconsideration by the State Appellees; Motion of the Charter School Parties for Reconsideration of the Court's May16, 2011 Decision; and the Amicus Curiae Brief of the National Alliance for Public Charter Schools in Support of Appellee Charter School Defendants' Motion for Reconsideration.

III. ARGUMENT

A. The Court 's Opinion Renders Georgia Law Unpredictable and Unattractive to Businesses.

Independent of the Court's ultimate conclusion, the Chamber has significant concerns with the Majority's reasoning. It significantly departs from this Court's traditional constitutional analysis and tools of construction. It puts at risk

thousands of Georgia laws impacting business – from torts to contracts to education and the corporate code – by valuing statements made in the legislative overview committee over textual and other well-settled methods of constitutional analysis. When deciding a course of conduct after this case, Georgia businesses will no longer be able to read the law as it is and rely on fundamental tools of constitutional construction and jurisprudence. They will also need to study statements in legislative journals created between 1977 and 1981. This leads to incredible unpredictability and makes the business of Georgia business more difficult.

The focus on legislators' statements presents a dramatic break from prior cases where legislative statements have been deemed to be inadmissible as evidence. *See Jackson v. Delk*, 257 Ga. 541, 543 (1987) (testimony of a legislator regarding the legislative intent is inadmissible). The reasoning that applies to those cases applies equally as strong to constitutional ones:

> While the opinion of a member of the legislature which passed an act, or that of the comptroller general, as to its meaning and purpose, might possibly often be valuable and instructive in construing the act and arriving at the legislative intent, it cannot be seriously contended that courts can properly resort to sources of this kind in ascertain the legislative will as expressed in a statute. These gentlemen might differ as to what an act did mean, which would only increase, rather than relieve, any difficulty a court might have in construing the law. But aside from this, which is only thrown out as a suggestion in passing, this method of arriving at the meaning of a

> public statute, cannot, after careful reflection, receive the sanction of any fair mind.

Fulton County v. Dangerfield, 260 Ga. 665, 666-67 (1990) (quoting *Stewart v. Atlanta Beef Co.*, 93 Ga. 12 (1893)). The Majority's departure not only undermines established laws, but also the bases of interpreting them.

Specifically, prior cases looked to the plain meaning of statutory and constitutional language as perhaps the most fundamental and straightforward principle of legal analysis. "[I]t is the duty of the court to give expression to the obvious meaning" of plain statutory/constitutional language. *Irwin v. Busbee*, 241 Ga. 567, 567 (1978). "The framers of a constitution and the people adopting it must be understood to have employed words in their natural sense, and no narrow or technical construction should be employed." *City of Valdosta v. Singleton*, 197 Ga. 194, 210 (1944). Business entities reasonably came to rely on this Court's enforcement of statutory and constitutional provisions based on this reasoning. The reliance is key to predictability, which is necessary to make business decisions of all kinds, including issues of investment, employment, taxation, growth, and operation. By contrast, legal uncertainty discourages local investment and the type of risk-taking that is fundamental to a growing economy.

This case highlights how a focus on legislative commentary leads to unpredictable and unwarranted results. Whatever some legislators may have said in a committee meeting, the constitutional provision at issue here could not have

been more clear: "[t]he General Assembly may provide by law for the creation of special schools in such areas as may require them and may provide for the participation of local boards of education in the establishment of such schools under such terms and conditions as it may provide." Art. VIII, Sec. V, Par. VII(a). The Court's opinion supplements this plain, unambiguous constitutional language and surmises, without basis, that the Georgia Legislature actually meant to limit "special schools" to "those schools that enrolled only students with certain special needs or taught only certain special subjects and did not include general K-12 schools comparable to those under the exclusive control of local boards of education." Maj. Op. at 11-12.

The Court's resulting analysis gives insufficient weight to the deliberate decisions of the General Assembly and the people of Georgia. The term "special school" was previously limited to "special area schools" in the 1966 Constitution and did not change in the 1976 Constitution. The 1983 Constitution removed the "area schools" limitation. However, the Court concludes that the legislative and referenda decisions to remove the limitation mean nothing.

The Court must presume that legislation is constitutional and that the General Assembly knows the state of the law when it enacts legislation or constitutional referenda. *Dep't of Transp. v. Woods*, 268 Ga. 53, 55 (1998). Therefore, removal of the limiting language by the General Assembly was

meaningful and is significant. *Transp. Ins. Co. v. El Chico Restaurants, Inc.*, 271 Ga. 774, 776 (1999) ("The rules of statutory interpretation demand that we attach significance to the Legislature's action in removing the emphasized, limiting language.") (*citing Humthlett v. Reeves*, 211 Ga. 210 (1954)). By removing the specific examples of a "special state school," the General Assembly – and the citizens of Georgia through the referenda process – meant to create a broader type of "special state school."

In the face of this language (and the traditional tools of construction used to interpret it), the Majority delved into fragments of a type of legislative history, even though it is axiomatic that, when the drafter's intent is clear in the language employed, the Court should look no further. This change renders an unknown quantity of laws susceptible to challenge based on a clause in a sentence of intent uttered by one legislator or another, even if that sentence contradicts the plain language of the Constitutional provision. Change, therefore, is needed to return constitutional jurisprudence to predictable ground. In previous close decisions of significant import, this Court has changed its direction quickly, and recently on a motion for consideration. *See Baker v. Wellstar Health Sys., Inc.*, 288 Ga. 336 (2010). *See also*, *Grissom v. Gleason*, 262 Ga. 374, 376 (1992) (abandoning one-year old constitutional analysis in *Denton v. Con-Way So. Express, Inc.*, 261 Ga. 41 (1991) (abrogating collateral source rule)).

The reasoning employed by the Majority to strike down the Commission Act by means of a flawed analysis creates risk for Georgia businesses. The opinion ignores plain language and the intentional act of the General Assembly and effectively calls into question reliance on well-established principles of statutory interpretation. For this reason, the Court's analysis gravely concerns the Georgia Chamber.

B. Abolishing the Commission Will Weaken the Workforce and Evidence Georgia's Resistance to Innovation.

The quality of Georgia's public schools directly correlates with its ability to recruit businesses. The quality of public education directly affects the quality of the workforce and the viability of Georgia as a business venue. The Georgia Chamber therefore has a strong interest in educational innovation and excellence, as the Georgia Chamber's Education and Workforce Development Committee's mission statement reflects:

> An important objective of the Georgia Chamber of Commerce is to team with local businesses, chambers and communities, state officials and other organizations to build the nation's best workforce and ensure employers have the talent they need to stay competitive. We believe strategies that link education and workforce development in a seamless system and the embedding of skills-based learning into academic instruction are vital to that objective.

The superior education available in charter schools created under the guidance of a dedicated authorizer, such as the Commission, is a matter of public record. As a dedicated authorizer, the Commission's sole and uncompromised

purpose is to approve and maintain innovative, academically outstanding, economically sustainable charter schools. O.C.G.A. § 20-2-2080, *et seq*. Data reflect that charter schools created and monitored by dedicated authorizers yield measurably better academic results than locally approved charter schools, and far better results than traditional public schools. *See A New Model Law for Supporting The Growth of High-Quality Public Charter* Schools, National Alliance for Public Charter Schools, June 2009 at 10 (single-purpose authorizing boards' "core mission is the authorization of public charter schools."); Georgia Department of Education's "2008-2009 Annual Report on Georgia's Charter Schools," pp. ii, xi, available at http://www.doe.k12.ga.us/pea_charter.aspx (charter schools collectively witnessed an 81% graduation rate (compared to a state average of 79%) and 61% of charter schools exceeded the student performance of their two closest schools.) Striking the Commission Act will strip Georgia of the educational advancement that Commission charter schools provide and thus will retard the advancement of Georgia's future workforce.

Businesses examine the quality of education when deciding whether to invest in a state because education ultimately shapes the future workforce. Commission charter schools offer innovative, challenging programs that will improve the State's workforce and thereby serve the best interests of Georgia's existing businesses and make Georgia an attractive venue for future businesses.

In addition to improving the workforce, Commission charter schools enhance Georgia as a business venue in that they evidence that Georgia is the single most forward-thinking, proactive Southern state when it comes to education. The Georgia Legislature's passing the Commission Act garnered laudatory press and cast Georgia in a very strong light nationally. The Commission thereby strengthened the viability of Georgia as a business venue. In 2010, corporate America took note of the Commission's role in helping Georgia win $400 million in federal Race to the Top funds for educational improvement. The Wall Street Journal and other national publications reported Georgia's award. Stephanie Banchero & Neil King, Jr., *Nine States, D.C. Win Race for Aid to Schools*, WALL ST. J., Aug. 25, 2010, *available at* http://online.wsj.com/article/SB10001424052748703447004575449320363145744.html; *9 states, D.C. receive 'Race to the Top' education funds*, USA TODAY, Aug. 24, 2010, *available at* http://www.usatoday.com/news/education/2010-08-24-race-to-top_N.htm#.

The positive press unfortunately has given way to recent reports of the Court's shocking decision striking the Commission Act. Sam Dillon, *In Georgia, Court Rule Could Close Some Charter Schools*, N.Y. Times, May 16, 2011, *available at* http://www.nytimes.com/2011/05/17/education/17georgia.html?partner=rss&emc=rss; *Georgia Supreme Court Overturns Charter-Schools Law*,

Wall St. J., May 16, 2011, *available at* http://online.wsj.com/ article/ SB10001424052748703509104576327893906917586.html. The message is clear: The Court's decision eliminated a promising and already successful educational innovation, Commission charter schools, forcing Georgia to take a step back educationally. As a result, the enhanced business opportunity that Commission charter schools create will dissolve.

IV. CONCLUSION

Based on the above, the Georgia Chamber urges the Court to reconsider its May 16, 2011 decision in this matter and to affirm the decision of the trial court.

Respectfully submitted, this 1st day of June 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 GEORGIA CHAMBER OF COMMERCE IN SUPPORT OF CHARTER SCHOOL APPELLEES' MOTIONS FOR RECONSIDERATION** by depositing copy of same in the U.S. Mail with adequate postage affixed and addressed as follows:

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