

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 AMERICANS FOR PROSPERITY IN
SUPPORT OF CHARTER SCHOOL PARTIES**

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Pursuant to Supreme Court of Georgia Rule 23, Amicus Curiae Americans for Prosperity (“AFP”) files this brief in support of the Charter School Parties’ Motion for Reconsideration and respectfully requests that this Court reconsider and vacate its May 16, 2011 decision.

I. STATEMENT OF INTEREST OF AMICUS CURIAE.

AFP is committed to educating citizens about economic policy and a return of the government to its Constitutional limits. AFP is an organization of grassroots leaders who engage citizens in the name of limited government and free markets on the local, state, and federal levels. The grassroots activists of AFP advocate for public policies that champion the principles of entrepreneurship and fiscal and regulatory restraint.

AFP’s educational programs and analyses help policymakers, the media, and individual citizens understand why policies that promote the American enterprise

system are the best method to ensuring prosperity for all Americans. To that end, AFP supports: cutting taxes and government spending in order to halt the encroachment of government in the economic lives of citizens; tax and expenditure limitations to promote fiscal responsibility; removing unnecessary barriers to entrepreneurship and opportunity; and restoring fairness to our judicial system.

Applied in the public education context, AFP believes that parental choice is a vital component to improving the quality of the education delivery system in America. AFP firmly believes that parental choice programs, including charter schools, lead to the creation of much needed educational options which create powerful incentives for all schools to enhance their primary mission of educating children. AFP recognizes that parental choice results in the dual effect of educational options and increased performance, both of which have tremendous social and economic benefits for the families involved and for the community at large.

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

In his best-selling book on free market principles, Economist Milton Friedman warned of the dangers of reducing parental choice in public education:

In schooling, the parent and child are the consumers, the teacher and school administrator the producers. Centralization in schooling has meant larger size units, a reduction in the ability of consumers to choose, and an increase in the power of producers. Teachers, administrators, and union officials are no different from

the rest of us. They may be parents, too, sincerely desiring a fine school system. However, their interests as teachers, as administrators, as union officials are different from their interests as parents and from the interests of the parents whose children they teach. Their interests may be served by greater centralization and bureaucratization even if the interests of the parents are not--indeed, one way in which those interests are served is precisely by reducing the power of parents.

Milton Friedman, *Free to Choose: A Personal Statement* (1980).

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). AFP fundamentally disagrees with the Majority’s premise and believes that it conflicts with the history of education in Georgia and the clear words of the current Constitution. In this respect, AFP relies upon the briefs of the Charter School Parties and others.

Overlooked by Majority opinion, yet recognized by the legislators who created the Act, is that Georgia’s current education system is based on a foundation of shared responsibility between state and local government that allows for diversity in the method and tactics used to educate our citizens, thus tapping into the free-market principles which are at the core of our society to improve public

education through realistic options for students and parents. Running completely contrary to this notion is the Majority's holding that local school districts have a monopoly over public education via exclusive authority granted under the current Constitution. The Majority opinion ignores the will of the people of Georgia, who sought to avoid a monopoly in public education and ratified the current Constitution giving the State the power to create "special schools," and giving the General Assembly the ability to enact the Commission Charter School Act.

As described in detail by the briefs of the Charter School Parties, the academic achievement results of injecting parental choice into the education system are unmistakable and positive. But looking past the practical reasons to reject an analysis of the Georgia Constitution which embraces an education monopoly, what needs to be stated clearly and directly, is that the Majority opinion deprives parents and students of the most basic tenet of our society...freedom.

Under exclusive local district control, the ability of a child to leave the traditional public school for a better option, particularly for families of limited means, is lost. Under exclusive local district control, the ability to pressure the traditional public school to improve its condition and better serve its student population, is lost. Under exclusive local district control, competition is eliminated for the traditional public school and any light that might be shed on public education by our bedrock of free market principles, is extinguished. The Majority

opinion is simply inconsistent with the intent of the framers of the Georgia Constitution and the U.S. Constitution.

III. CONCLUSION.

AFP is committed to parental choice in education because AFP recognizes that local school districts will not provide the best possible education system without a degree of market-based competition which arises when parents and students are given options to select the school that most fits the student's needs. By declaring the Act unconstitutional, however, the Majority has removed such choice from thousands of parents and students in Georgia, and firmly established a monopoly over public education which will not serve well our desire and need for increased educational performance and outcomes. As stated succinctly by Milton Friedman, "You cannot make a monopolistic supplier of a service pay much attention to its customers' wants—especially when it does not get its funds directly from its customers. The only solution is to break the monopoly, introduce competition and give the customers alternatives."¹ For these reasons, this Court should reconsider and vacate its May 16, 2011 decision and affirm the trial court's order.

¹ Milton Friedman, *Milton Friedman on Busting the School Monopoly*, Newsweek, December 5, 1983.

Respectfully submitted, this 31st 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 AMERICANS FOR PROSPERITY IN SUPPORT OF APPELLEE CHARTER SCHOOL DEFENDANTS** by depositing copy of same in the U.S. Mail with adequate postage affixed and addressed as follows:

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