

**IN THE DISTRICT COURT OF APPEAL
FOURTH DISTRICT OF FLORIDA**

THE SCHOOL BOARD OF PALM BEACH COUNTY,

Appellant,

v.

Case No.: 4D15-2032

L.T. No.: 2015-3112 FOI

FLORIDA CHARTER EDUCATIONAL FOUNDATION INC.,
AND SOUTH PALM BEACH CHARTER SCHOOL,

Appellees.

**BRIEF OF THE NATIONAL ALLIANCE FOR PUBLIC CHARTER
SCHOOLS, FLORIDA CHARTER SCHOOL ALLIANCE, URBAN
LEAGUE OF GREATER MIAMI, THE HISPANIC COUNCIL FOR
REFORM AND EDUCATIONAL OPTIONS, ASSOCIATED INDUSTRIES
OF FLORIDA, AND THE FOUNDATION FOR EXCELLENCE IN
EDUCATION, AS AMICI CURIAE IN SUPPORT OF APPELLEES**

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Toughest ‘choice’ schools to get into aren’t always the ones... |
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C. INTEREST OF AMICI CURIAE NATIONAL ALLIANCE FOR PUBLIC CHARTER SCHOOLS, FLORIDA CHARTER SCHOOL ALLIANCE, URBAN LEAGUE OF GREATER MIAMI, ASSOCIATED INDUSTRIES OF FLORIDA, HISPANIC COUNCIL FOR REFORM AND EDUCATIONAL OPTIONS, AND THE FOUNDATON FOR EXCELLENCE IN EDUCATION.

The National Alliance for Public Charter Schools ("NAPCS") is the leading national non-profit organization committed to advancing the public charter school movement. NAPCS endeavors to grow the high-quality public charter school options available to families, especially those without access to high-quality traditional district public schools.

The Florida Charter School Alliance, a non-profit organization, was formed to be the unified voice of the public charter schools in in Florida, and to ensure that every Florida family may have access to and choose high-quality charter schools.

The Hispanic Council for Reform and Educational Options ("HCREO") is a non-profit organization that serves as a national voice for the right of Hispanic families to access all educational opportunities for their children, regardless of income. HCREO believes that the most effective way to improve educational outcomes for Latino children is to empower parents to choose effective educational programs, including quality charter schools.

The Urban League of Greater Miami, Inc. is a non-profit community service agency that provides services in their community in employment, childcare, senior citizen services, housing, economic development, training, community service,

political advocacy and education. The Urban League has focused on the advancement of education and educational options, including charter schools, to enable black children to reach their fullest potential.

Associated Industries of Florida is a statewide association of business, trade, commercial and professional entities, organized as a non-profit corporation and existing under the laws of Florida. Representing the interests of over 10,000 corporations, professional associations, partnerships and proprietorships, AIF has appeared as amicus curiae in numerous Florida appeals. AIF members rely on a well educated workforce, and have a significant interest in developing and expanding high quality educational options, including charter schools, for Florida's students.

The Foundation for Excellence in Education ("ExcelinEd") is a nonprofit, nonpartisan organization founded in 2008 whose mission is to build an American educational system that equips every child to achieve his or her God-given potential, and, as part of this mission, encourages the expansion and replication of high-quality charter schools.

D. SUMMARY OF THE ARGUMENT

The State Board of Education's reversal of the Palm Beach School District's (District) denial of the charter school application should be affirmed. The District did not have good cause or competent substantial evidence to deny the application as not fulfilling the statutory requirements for innovation, and the District's definition of innovation is unworkable and inconsistent with the charter statutes. The State Board of Education's statutory interpretation is entitled to deference, and the State Board correctly determined that the District did not have good cause to deny the charter school application.

The State Board of Education's legislatively assigned role in reviewing the District denial of a charter school application is constitutional, as the only other Florida appellate court to consider this question has held. However, this Court has no need to reach the constitutionality of the State Board's action. Under Florida Supreme Court precedent, the District has no standing to raise constitutional claims. To the extent this Court considers the constitutionality of the State Board's action, the instant case is the poster child for State Board of Education oversight being both necessary and constitutional.

E. ARGUMENT

Amici request this Court affirm the State Board of Education's ruling reversing the District's denial of the charter school application. The District lacked good cause to deny the charter application for allegedly failing to encourage innovative learning methods.

I. THE DISTRICT DID NOT HAVE COMPETENT SUBSTANTIAL EVIDENCE AND GOOD CAUSE TO DENY THE CHARTER APPLICATION BECAUSE THE CHARTER SCHOOL ALLEGEDLY WOULD NOT ENCOURAGE INNOVATIVE LEARNING METHODS

Nationally, there are approximately 6,700 charter schools serving over 3 million students in 42 states and the District of Columbia.¹ Since 2005, the number of students enrolled in charter schools has more than doubled.² In Florida more than 250,000 students, 66% of whom are minority students, are enrolled in almost 650 public charter schools. Approximately 9% of Florida's public school students attend charter schools in 46 districts.³

¹ *FAQs, National Alliance for Public Charter Schools*, <http://www.publiccharters.org/get-the-facts/public-charter-schools/faqs/> (last visited Jan. 11, 2016).

² *Total Number of Students - National - 2013-2014*, <http://dashboard.publiccharters.org/dashboard/students/page/overview/year/2014> (last visited Jan. 11, 2016).

³ *Charter_Oct_2015_11-20-15.pdf*, http://www.fldoe.org/core/fileparse.php/7696/urlt/Charter_Oct_2015_11-20-15.pdf (last visited Jan. 11, 2016).

The performance of Florida charter schools continues to improve. Based on 2014 data, the average student in a Florida charter school is making greater academic progress than similar students enrolled in the regular public schools.⁴ The academically lowest performing charters must be closed, unlike regular public schools. §1002.33(9)(n)(4) Fla. Stat. (2015)

In Florida, unlike many other states, only districts can authorize regular charter schools.⁵ Once approved, a charter school is subject to oversight and supervision by the district, and a district may terminate a charter school for good cause if it is not following statutory requirements and the agreed-upon charter contract. §1002.33(8) Fla. Stat. (2015)

The State Board of Education has promulgated rules that establish both a model application form and a model evaluation form that must be used. *See Fla. Admin Code Rule 6A-6.0786* The model application and evaluation forms in use

⁴*Charter_Student_Achievement_Report_1314.pdf*, http://www.fldoe.org/core/fileparse.php/7778/urlt/Charter_Student_Achievement_Report_1314.pdf (p39-40) (last visited Jan. 11, 2016).

⁵ *Multiple Charter School Authorizers* | Heartland Institute, <https://www.heartland.org/policy-documents/research-commentary-multiple-charter-school-authorizers> (“Of the 41 states that allow charter schools, approximately 18 allow viable multiple authorizers . . .”) (last visited Jan. 12, 2016).

when this application was filed had 19 sections.⁶ Typically, a team of professional staff from the district evaluates the application, often dividing the labor - the transportation staff might evaluate the transportation section, someone else might evaluate curriculum, etc. Each section of the evaluation is marked as meeting, partially meeting, or not meeting the standards, and an overall recommendation is made to approve or deny.

In this case, District professional staff and superintendent recommended that the application met all the requirements for approval. This was communicated to the charter applicant, and the superintendent sent the application to the school board with a recommendation for approval. (R. 954) Encompassed within the overall recommendation for approval was the determination that section 1 of the application met the requirements for approval. Section 1 of the model application provided in relevant part that the application should

Describe how the school will meet the prescribed purposes for charter schools found in section 1002.33(2)(b), F.S.
In accordance with the law, charter schools shall fulfill the following purposes . . .
Encourage the use of innovative learning methods.

⁶ Model Evaluation Form - *0070798-iepc_m2_apri2012.pdf*, http://www.fl DOE.org/core/fileparse.php/7700/urlt/0070798-iepc_m2_apri2012.pdf (last visited Jan. 11, 2016); Charter School Application Form – DRAFT - IEPC_M1.pdf, http://www.fl DOE.org/core/fileparse.php/7700/urlt/IEPC_M1.pdf (last visited Jan. 11, 2016).

Section 1 of the evaluation form noted no lack in this application section. (R. 912)

The application was placed on the District consent agenda for approval, but the day of the meeting, a board member removed the charter application from the consent agenda. At the meeting, in spite of professional staff and the superintendent's prior determination that the application met all statutory requirements, including the requirement to "encourage the use of innovative learning methods," a unanimous board voted to deny the application for allegedly failing this same requirement. All the "evidence" on the record about whether the school met the statutory requirement, in addition to the prior staff recommendation, was this exchange:

[Board Member] I guess my question is I didn't see anything is there anything innovative about this charter school that they are doing that is different that would comply with the statutory requirement that they provide an innovative learning environment?

...

[Staff] What we have is a K-8 that is part of where they feel there is some innovation, blended instruction and extended technology to access text.

[Board Member] my question to staff to the superintendent is from staff's perspective are they providing any program that we can't provide or are not providing that is innovative and different than what we are currently doing in some of our schools?

[Staff]: No.

(R.922)

This exchange was not competent substantial evidence that the application did not meet the statutory requirements. District staff, those who earlier determined that section 1 met the requirement to “encourage the use of innovative learning methods” just stated that the charter school would not provide any program that the the District could not provide in its schools. They did not even specify the District was providing the same programs.

II. THE DISTRICT DID NOT HAVE GOOD CAUSE TO DENY THE CHARTER APPLICATION BECAUSE ITS INTERPRETATION OF INNOVATION WAS CONTRARY TO LAW

At the board meeting, the District apparently took the position that a charter school must be innovative and different from something the District could or did provide. The additional argument maintained on appeal was that because a similar charter application had been approved seven times, it showed that the new charter was not innovative. (IB at 30-31) Combining these concepts, the District definition is that a charter must be innovative and different from all District schools and all charter schools. This definition is not only contrary to the charter statutes, but is inconsistent with a rudimentary understanding of how geography and capacity impact students’ access to innovative learning methods.

Any interpretation of the requirement to “encourage innovation in learning methods” must be understood in context – “a ‘statute should be interpreted to give effect to every clause in it, and to accord meaning and harmony to all of its parts.’

Acosta v. Richter, 671 So.2d 149, 153–54 (Fla.1996).”, quoted in *Jones v. ETS of New Orleans, Inc.*, 793 So. 2d 912, 914-15 (Fla. 2001). One of the purposes a charter school may fulfil is to “provide rigorous competition within the public school district to stimulate continual improvement in all public schools.” §1002.33(2)(c)(2) Fla. Stat. (2015) Prior to the District’s newly discovered “concern” about a lack of innovation, it appears charter schools were providing a rigorous competition. As set out in the budget workshop, charter enrollment had increased in the District 273% since 2009. The District was projecting that overall district enrollment in 2016 would increase by 2,161, but that charter enrollment would increase by 5,711 students, meaning the regular public schools would enroll 3,500 fewer students. (R. 964).

The District’s definition⁷ of innovation is contrary to the statutory concepts of rigorous competition, and continual improvement. In the normal course of events, if a competitor introduces something that captures market share, competitors will

⁷ Contrary to Appellant’s arguments, a District definition of a statutory term is not entitled to deference; the State Board of Education receives that deference.

An agency's [state board's] interpretation of a statute that it is charged with enforcing is entitled to great deference and will be approved on appeal unless it is clearly erroneous. *BellSouth Telecomms., Inc. v. Johnson*, 708 So.2d 594, 596–97 (Fla.1998); *Dep't of Ins.*, 438 So.2d at 820.

Imhotep-Nguzo Saba Charter Sch. v. Dep't of Educ., 947 So. 2d 1279, 1285 (Fla. 4th DCA 2007).

attempt to introduce the same or better innovations, and round and round the competitive cycle will go. But, the District definition stifles competition. It is not a true competition, certainly not a rigorous competition, if charters are relegated to only offering something different than the District.

By way of example, last year the *Palm Beach Post* wrote how the acceptance rate at the five most popular District elementary schools with special programs was less than 15% percent.⁸ It would encourage innovative learning opportunities and provide vigorous competition if charters were to provide additional capacity by replicating these popular programs. Yet, the District definition of innovation would prohibit this.⁹

The purpose of charters is to provide high-quality educational opportunities, and the geographic location where an educational opportunity is available is important. The District, by population, is the 11th largest school district in the

⁸ *Toughest 'choice' schools to get into aren't always the ones...* | [www.mypalmbeachpost.com, http://www.mypalmbeachpost.com/news/news/local-education/toughest-choice-schools-to-get-into-arent-always-t/njyd4/](http://www.mypalmbeachpost.com/news/news/local-education/toughest-choice-schools-to-get-into-arent-always-t/njyd4/) (last visited Jan. 12, 2016).

⁹ Courts in Pennsylvania have held that comparable requirements for innovation do not mean that charters have to offer something different from the district. *See e.g., Bensalem Tp. Sch. Dist. v. Bensalem Keystone Acad. Charter Sch.*, 1596 C.D. 2014, 2015 WL 5436993, at *5 (Pa. Commw. Ct. 2015)

country. Unless the District offers the same program to every student in every school (it does not!), charter schools making programs available to a greater number of students or students in different geographic areas would enable innovative learning, but would be contrary to the District definition.

The argument that the application was not innovative because seven charter schools had been previously approved with comparable applications, is also contrary to statutory language. High-quality charter schools are statutorily encouraged to replicate, both within a district and cross-district. To be considered a replication, the charter school must closely model another charter. See §1002.331& §1002.33(6)(b)(3)(b) Fla. Stat. (2015) How ridiculous would it be for the Legislature to have encouraged high-quality charter schools to replicate, and then to allow the District to deny the replication application as not innovative?

Staff stated at the board meeting that one innovation this application offered was blended learning (R. 922), and, in a different context, the charter statute seems to define blended learning as innovative education:

[T]he charter school shall implement **innovative blended learning instructional models** in which, for a given course, a student learns in part through online delivery of content and instruction with some element of student control over time, place, path, or pace and in part at a supervised brick-and-mortar location away from home.
[Emphasis added]

§1002.33(5)(b)(4) Fla. Stat. (2015) This is more evidence that the District incorrectly

defined “innovative.” Prior to 2002, the charter statute language was “[e]ncourage the use of *different* and innovative learning methods,” but “different” was removed in 2002, also contradicting the District’s interpretation that what is offered by a charter applicant needs to be “different” from anything offered by the District or another charter. §228.056(2) Fla. Stat. (2001).

In summary, the State Board of Education committed no error in determining that the District did not have good cause to deny this application, and should be affirmed. District professional staff and the superintendent determined that this charter application met all of the statutory requirements, including the requirement to encourage innovative learning methods. Yet, with no different information, the District denied this charter application for allegedly failing to be innovative, defining innovative in a contextually ridiculous way that contradicts other provisions of the charter statute and a basic understanding of how geography and capacity impact students’ access to innovative learning methods.

District board members did not seem to appreciate the irony of their actions. They “defined” charter schools as not innovative, and offering nothing different from District schools. Yet, they did this while thousands of students annually were leaving the District schools that offered “everything” for those “non innovative” charters. Parents apparently had a different understanding of what the District schools offer, and what innovation meant, and were voting with their feet.

III. THE DISTRICT HAS NO STANDING TO CHALLENGE THE CONSTITUTIONALITY OF THE STATE BOARD'S REVERSAL OF THE SCHOOL DISTRICT'S DENIAL OF THIS CHARTER APPLICATION

Far from supporting any argument that the State Board of Education acted unconstitutionally, the instant case proves the State Board of Education's oversight of District applications denials of charter applications is appropriate, necessary and constitutional. Before reaching the merits, as a preliminary, but dispositive matter, the District has no standing to challenge the constitutionality of the State Board's review authority and actions in the instant case.

Is a well-established principle of administrative law that in an appeal from an administrative proceeding, a constitutional claim may be raised for the first time on appeal. *See generally, Key Haven Associated Enters., Inc. v. Bd. of Trs. of Internal Imp. Trust Fund*, 427 So. 2d 153, 154, 735 (Fla. 1982). But that is beside the point: public officials “must presume legislation affecting their duties to be valid, and do not have standing to initiate litigation for the purpose of determining otherwise.” *Dep't of Educ. v. Lewis*, 416 So. 2d 455, 458 (Fla. 1982); *see also Florida Citrus Cnty. Hosp. Bd. v. Citrus Mem'l Health Found., Inc.*, 150 So. 3d 1102, 1106, (Fla. 2014) (“Florida courts have precluded State agencies and local governments from challenging the constitutionality of certain legislation.”). For a time, after *Fuchs v. Robbins*, 818 So. 2d 460(Fla. 2002) *disapproved of by Crossings At Fleming Island Cmty. Dev. Dist. v. Echeverri*, 991 So. 2d 793 (Fla. 2008), it seemed that a public

official could raise a constitutional claim as a defense, but *Echeverri* clarified that there was no defensive posture exception. 991 So. 2d 793, 794 (Fla. 2008).

The District cites *Sanford v. Rubin*, 237 So. 2d 134, 137 (Fla. 1970), but *Sanford* just states the proposition that a fundamental error may be raised on appeal, even if not preserved below. That is irrelevant if there is no standing. The prior charter school cases, in which constitutional claims were first raised after administrative proceedings before the State Board, did not address the standing of the district to bring the challenge, which was plausible, considering that both cases were briefed before the defensive posture exception was removed in *Echeverri* in July 2008. *See Sch. Bd. of Volusia County v. Acads. of Excellence, Inc.*, 974 So. 2d 1186 (Fla. 5th DCA 2008); *Duval County Sch. Bd. v. State, Bd. of Educ.*, 998 So. 2d 641 (Fla. 1st DCA 2008).

IV. THE STATE BOARD OF EDUCATION ACTED CONSTITUTIONALLY WHEN REVERSING THE SCHOOL DISTRICT’S DENIAL OF THIS CHARTER APPLICATION, AND SHOULD BE AFFIRMED

The District’s lack of standing should be dispositive. Briefly addressing the constitutional claims, the District's arguments do not support a determination of unconstitutionality. Appellant, in its initial brief states that the District is “a leader in sponsoring charter schools.” (IB at 2) This description is false and misleading. Perhaps, at some point in the past, this description was accurate, but not during

December 2014, or today. The below table¹⁰ is illustrative: the percentage is of applications approved, and in parentheses is the total number of number of applications filed.

App Approval	Broward	Miami Dade	Palm Beach	Statewide
2012-13	51% (41)	14% (58)	25% (36)	28%
2013-14	55% (40)	33% (43)	52% (31)	41%
2014-15	41.% (32)	33.% (36)	0% (22)	25%

In 2014, the same year the District denied the instant charter, it denied every charter application. It strains credibility that, compared to the surrounding districts, all the applications filed with the District in 2014 were so deficient they could not be approved. Since the instant case was the first one the District denied because of the alleged lack of innovation, the District must have “found” other grounds to deny the remaining applications. Far from being a “leading sponsor,” the District’s actions made it the most charter-hostile large district in Florida.

The most plausible explanation for its actions in the instant case and the denial of all other applications, is that the District wanted to slow or stop the growth of

¹⁰ *Annual Authorizer Reports*, <http://www.fldoe.org/schools/school-choice/charter-schools/authorizers/annual-authorizer-reports.shtml> (last visited Jan. 11, 2016).

charter schools, because charter schools were too successfully competing with the District for students. Just before the District board meeting where this instant application was denied, the members had been briefed about a 273% increase in charter school enrollment since 2009, with most of any student population increase going to charter school enrollment. The prior year, the District had the 2nd largest increase in charter enrollment in the country, a 34% increase.¹¹

Appellants are not the first district to unlawfully attempt to stop approving charter schools or certain charter schools, to remove competition. Osceola once attempted to do this, in effect denying a charter school because it was a charter school. *See, Sch. Bd. of Osceola County v. UCP of Cent. Florida*, 905 So. 2d 909, 910 (Fla. 5th DCA 2005) (charter denied because it would not qualify for capital funds, but no new charter school would). In Orange County, a charter school was unanimously approved, opened with full enrollment and a waiting list, but when the charter board applied for an additional school two years later, basically the same application, the board denied on multiple grounds. The Orange denial was

¹¹ *2014_Enrollment_Share_FINAL.pdf*, http://www.publiccharters.org/wp-content/uploads/2014/12/2014_Enrollment_Share_FINAL.pdf (p3)(last visited Jan. 12, 2016).

reversed on appeal by the state board,¹² as was the Osceola denial, which was upheld by the 5th DCA. In a related matter, Miami Dade was found this past year to have retaliated against district employees who were attempting to open a conversion charter school.¹³

There are no alternative authorizers in Florida; the temptation is present for a district to deny a charter, not because of a bad application, but because the charter is likely to do a good job and compete with a district for students. This process is similar to putting Winn Dixie in charge of permitting Publix stores. It is much easier to deny a permit than to compete for customers. This dynamic highlights the need for State Board oversight. Appellant argues that the exercise of this oversight is

[U]nconstitutional as it fails to provide standards or factors to guide the decision of the State Board of Education, the process fails to include the procedural protections of the APA Additionally, it allows the state Board of Education to exceed its constitutional powers of oversight of the state system of education to infringe on the school board's exclusive constitutional power to "operate control and supervise" public schools under article IX of the Florida Constitution."

IB at 49.

¹² Microsoft Word - agenda item - Renaissance at Orlando 2012.doc - 0073650-rena.pdf, <http://fldoe.org/core/fileparse.php/7568/urlt/0073650-rena.pdf> (last visited Jan. 11, 2016).

¹³ Agency Final Order-13001492 AFO.pdf, <https://www.doah.state.fl.us/ROS/2013/13001492%20AFO.pdf> (last visited Jan. 11, 2016).

Appellant's first argument is that no standards govern the State Board of Education's review, yet its oversight review in this area is similar to every other area of its oversight. The oversight is constitutional. The "state board of education shall . . . have such supervision of the system of free public education as is provided by law." Art. IX, §. 2 Fla. Const. In Florida Statutes §1002.38 (2015) (law) the general oversight authority is spelled out

The State Board of Education shall oversee the performance of district school boards . . . in enforcement of all laws and rules. District school boards . . . shall be primarily responsible for compliance with law and state board rule.

In reviewing charter school appeals, the State Board is determining whether the District complied with the charter statutes and rules of the State Board. The District is by rule required to use the model evaluation form to evaluate charter applications, can only deny a charter school for statutory good cause, and is not free to incorrectly interpret the statutory requirement to "encourage innovative learning methods." The State Board had numerous standards to apply while determining the District denial was in error. Historically, most denials of applications are upheld at the state level - the State Board is not acting to arbitrarily overturn all district denials. In 2014-15 the Charter School Appeal Commission and State Board only approved 2 out of 6

appeals of charter denials, of which this case was one.¹⁴

Appellant's second argument is that State Board oversight violates the District's authority to "operate, control and supervise" public schools under Article IX §4 of the Florida Constitution. It is hard to envision how determining that the District has violated state laws and State Board of Education rules, and directing it to act lawfully, exceeds the constitutional oversight authority given to the State Board. District operation, control and supervision is always subject to legislative parameters, enforceable by the State Board. The *Volusia* case is directly on point.

Section 1002.33(6)(c) does not permit the State Board to open a charter school. Rather, the statute permits the State Board to approve or deny a charter application after it completes an extensive review process. Granting a charter application is not equivalent to opening a public school. The approval of an application is just the beginning of the process to open a charter school. Once the charter application has been granted, the school board still has control over the process because the applicant and the school board must agree on the provisions of the charter. *See* § 1002.33(6)(h), Fla. Stat. (2005). A school board can also cause a charter to be revoked or not renewed. *See* § 1002.33(8), Fla. Stat. (2005).

Furthermore, under the Constitution of Florida, while the school board shall operate, control and supervise all free public schools within their district the State Board of Education has supervision over the system of free public education as provided by law.

¹⁴ *Appeal Schedule*, <http://www.fl DOE.org/schools/school-choice/charter-schools/charter-school-appeal/appeal-schedule.shtml> (last visited Jan. 11, 2016).

Sch. Bd. of Volusia County, 974 So. 2d 1186, 1193 (Fla. 5th DCA 2008). And, contrary to Appellants argument, *Duval County Sch. Bd.*, 998 So. 2d 641, 643 (Fla. 1st DCA 2008), is not to the contrary. *Duval* was not about oversight but construed a different “statute [that] permits and encourages [FN omitted] the creation of a parallel system of free public education escaping the operation and control of local elected school boards.” That now repealed statute would have allowed charters to apply, be approved, enter into a contract and be terminated, an entire lifecycle, with no supervision from the district in which they were located. §1002.335 Fla. Stat. (2007) That is a far cry from the State Board oversight in the instant case. The State Board acted constitutionally and its reversal of the District’s charter application denial should be affirmed. No school district is above the law.

F. CONCLUSION

Amici respectfully request this Court affirm the State Board of Education ruling that reversed the District charter school application denial.

Dated this 19th day of January, 2019.

Respectfully submitted,

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G. CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of January, 2016, a true and correct copy of the foregoing was e-filed via eDCA, and was served by email to the following:

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H. CERTIFICATE OF COMPLIANCE

Undersigned counsel certifies pursuant to Florida Rule of Appellate Procedure

9.210(a)(2) that this brief complies with the type-font limitation.

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