

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

No. H038982

BULLIS CHARTER SCHOOL,

Plaintiff and Appellant,

v.

LOS ALTOS SCHOOL DISTRICT, et al.,

Defendants and Respondents.

On Appeal from the Superior Court of Santa Clara County
(Case No. CV144569, Honorable Patricia M. Lucas, Judge)

**APPLICATION TO FILE AND
BRIEF AMICUS CURIAE OF
PACIFIC LEGAL FOUNDATION
IN SUPPORT OF PLAINTIFF AND APPELLANT
AND IN SUPPORT OF REVERSAL**

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Court of Appeal Case Number: **H038982**
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APPELLANT/PETITIONER: **Bullis Charter School**
RESPONDENT/REAL PARTY IN INTEREST: **Los Altos School District, et al.**

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Check one): INITIAL CERTIFICATE SUPPLEMENTAL CERTIFICATE

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

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JOSHUA P. THOMPSON

Date: **September 16, 2013**

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

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INTRODUCTION

Pursuant to California Rule of Court 8.200(c), Pacific Legal Foundation (PLF) respectfully submits this application to appear as Amicus Curiae in support of Appellant Bullis Charter School (Bullis) and combined herein is the proposed brief amicus curiae.

APPLICATION OF PACIFIC LEGAL FOUNDATION TO APPEAR AS AMICUS CURIAE IN SUPPORT OF APPELLANT AND IN SUPPORT OF REVERSAL

TO THE HONORABLE PRESIDING JUSTICE:

Pursuant to California Rules of Court, Rule 8.200(c) and for the reasons set forth in this request, Pacific Legal Foundation respectfully requests permission to file the accompanying brief amicus curiae in support of Appellant Bullis Charter School, and in support of reversal of the lower court decision.¹

PLF is a nonprofit, tax-exempt foundation incorporated under the laws of California, organized for the purpose of litigating important matters of public interest. PLF is headquartered in Sacramento, California, and has satellite offices in Washington and Florida. Formed in 1973, PLF believes in and supports the principles of limited government and free enterprise, the right

¹ Pursuant to Rule 8.200(c)(3), Amicus Curiae affirms that no counsel for any party authored this brief in whole or in part, and that no person or entity made a monetary contribution specifically for the preparation or submission of this brief.

of individuals to own and make reasonable use of their private property, and the protection of individual rights. PLF has participated as amicus curiae in many cases involving education reform including *Today's Fresh Start, Inc. v. L.A. Cnty. Office of Educ.*, 57 Cal. 4th 197 (2013); *Cal. Charter Schs. Ass'n v. LAUSD*, 151 Cal. Rptr. 3d 585 (2013); *Ariz. Christian Sch. Tuition Org. v. Winn*, 131 S. Ct. 1436 (2011); *Wells v. One2One Learning Found.*, 39 Cal. 4th 1164 (2006); *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002); *Mitchell v. Helms*, 530 U.S. 793 (2000); and *Wilson v. State Bd. of Educ.*, 75 Cal. App. 4th 1125 (1999).

PLF is familiar with the issues presented in this case. This case raises important issues of education law as well as policy considerations concerning the role of charter schools as a means for improving California's public education system. PLF has a longstanding interest in education law, and in ensuring that parents have choices in how their children are educated. To that end, PLF has developed a significant expertise in the Charter Schools Act of 1992, Proposition 39, and California education law. Here, PLF explains why a successful Proposition 39 lawsuit must be enforceable in subsequent school years. The Los Altos School District's attempt to prevent any enforcement of this Court's decision in *Bullis Charter Sch. v. Los Altos Sch. Dist.*, 200 Cal. App. 4th 1022 (2011), would render Proposition 39 largely toothless, and would thwart the will of voters who adopted it to ensure that charter schools

be treated as public schools' equals. PLF believes that its public policy perspective and litigation expertise will provide a helpful insight on the issues presented that will assist the Court in its adjudication.

**PACIFIC LEGAL FOUNDATION'S
BRIEF AMICUS CURIAE
IN SUPPORT OF APPELLANT**

SUMMARY OF ARGUMENT

The primary question underlying this appeal is not whether, in fact, the Los Altos School District (School District) continues to violate Proposition 39. It is undeniable that, in any given year, the underlying facts that determine a charter school's precise facilities-entitlement under Proposition 39 will change. But where a school district already has a track record of violating Proposition 39, as the School District does, the aggrieved charter school should not be required to begin the enforcement process anew. Courts retain jurisdiction to enforce writs and judgments in order to ensure continued compliance with the law, and to prevent the waste of judicial resources that would result from duplicative efforts. *See* Code of Civ. Proc. §§ 128, 187, 1097; *Branson v. Sharp Healthcare, Inc.*, 193 Cal. App. 4th 1467, 1476 n.4 (2011) ("court [] has the inherent authority to order compliance with its rulings.").

Failure to enforce writs secured under Proposition 39 would render that Proposition largely toothless, thereby thwarting the will of voters who

overwhelmingly want charter schools to be treated as traditional public schools' equals. California voters adopted Proposition 39 to ensure that school districts provide children in charter schools with facilities that are "reasonably equivalent" to those provided to traditional public schools students. *See* Educ. Code § 47614(b). Prior to Proposition 39, charter schools had significantly greater financial struggles since they could rarely access public school facilities and lacked equivalent funding for their own facilities. Thus, Proposition 39 is essential to ensuring the continued ability of charter schools to offer families a choice about how their children are educated.

If the delays caused by litigation leave charter schools no way to enforce a writ gained under Proposition 39, then those rights will be meaningless. A school district that strategically delays and resists writ instructions should not benefit from that delay by asserting that the delay has caused the underlying facts to make the writ unenforceable. And even if a charter school can subsequently recover monetary damages for the violation, those funds offer little consolation to the children who wanted to attend the charter school, but could not because the charter school lacked the necessary space.

In adopting Proposition 39, California voters have made clear that charter schools are not to be treated as second-class entities when it comes to educating the state's children. In order to ensure that Proposition 39 continues

to provide charter schools with the facilities to which they are entitled, courts must be able to adjudicate whether a school district with a judicially-recognized history of violating the law has complied with the court's mandate. For these reasons, the Court should reverse the lower court and hold that the writ of mandate issued pursuant to this Court's decision in *Bullis Charter Sch.*, 200 Cal. App. 4th at 1022, is enforceable in subsequent school years.

ARGUMENT

I

TRIAL COURTS MUST RETAIN JURISDICTION TO ENFORCE JUDGMENTS SECURED FROM A SUCCESSFUL PROPOSITION 39 LAWSUIT

As explained in detail by both parties in this case, the path undertaken by Bullis to vindicate its Proposition 39 rights was long and arduous. *See App. Op. Br. at 6-11; Resp. Br. at 6-8.* It took three years of contentious litigation before this Court, in 2011, ruled that the school district's facilities offer for the 2009-2010 school year did not comply with Proposition 39. *Bullis Charter Sch.*, 200 Cal. App. 4th at 1030. It is the nature of Proposition 39 litigation that multiple school years—and subsequent annual Proposition 39 facilities offers—will pass in the time it takes for a charter school to prove that a school district has violated Proposition 39 in any given year.

It is equally true that school districts are in a constant state of flux, and the criteria that determine a proper Proposition 39 facilities offer change year-

to-year. *See* Cal. Code Regs. tit. 5, § 11969.3, *et seq.* (specifying a school district's methodology for determining a proper Proposition 39 facilities request); *see also Bullis Charter Sch.*, 200 Cal. App. 4th at 1039-40 (explaining the regulations). But if that truth alone is sufficient to prevent a successful charter school from enforcing its Proposition 39-won writ, there is no reason for a school district to ever comply. Like Sisyphus condemned to hopelessly roll the rock uphill, a charter school could win a succession of annual challenges to the district's facilities offer, yet never be able to enforce the writ. Filing additional lawsuits would simply compound the futility.

For well over a century, California courts have prevented unsuccessful litigants from ignoring a court's mandate by retaining jurisdiction over the case until the violating party complies with the law. "It is well settled that the court which issues a writ of mandate retains continuing jurisdiction to make any order necessary to its enforcement." *City of Carmel-by-the-Sea v. Bd. of Supervisors of Monterey Cnty.*, 137 Cal. App. 3d 964, 971 (1982); *see also Cnty. of Inyo v. City of L.A.*, 71 Cal. App. 3d 185, 205 (1977) ("court has continuing jurisdiction to enforce the writ until it is fully satisfied.").

A court's continuing authority to enforce writs of mandate is recognized by statute, *see* Code of Civ. Proc. § 1097, but it is the nature of writs of mandate that requires them to be enforced where the public entity refuses to change its behavior in accordance with the writ's command. *See Hobbs v.*

Tom Reed Gold Mining Co., 164 Cal. 497, 501 (1913) (a court’s “power to compel obedience” with a writ of mandate would exist even “in the absence of [Section 1097].”)” If courts refuse to enforce writs, the result is a duplicity of actions and a waste of judicial resources. *See Gonzales v. Int’l Ass’n of Machinists*, 213 Cal. App. 2d 817, 820 (1963). To ensure “full and final justice between the parties,” courts must exercise their continuing jurisdiction and determine whether a governmental entity is abiding the court’s mandate. *Id.*; *see also King v. Woods*, 144 Cal. App. 3d 571, 578 (1983) (compelling compliance with a writ of mandate is a court’s “least severe” recourse).

The writ of mandate issued in accordance with this Court’s 2011 decision in *Bullis Charter School* was broad and forward-reaching. It requires the school district to offer and provide “reasonably equivalent” facilities to Bullis Charter School; the same behavior that is commanded by Proposition 39. Educ. Code § 47614(b). Thus, for the writ to have effect other than that already required by law, it must be in the court’s enforcement of the writ’s commands. *See Cal. Labor Fed’n v. Occupational Safety & Health Standards Bd.*, 5 Cal. App. 4th 985, 989 n.1 (1992).

It is not uncommon for courts to retain jurisdiction over school districts that have shown a willingness to thwart the law. *See Brown v. Bd. of Educ. of Topeka (Brown II)*, 349 U.S. 294, 300-01 (1955) (trial court should retain jurisdiction to ensure compliance with Court’s earlier mandate); *Freeman v.*

Pitts, 503 U.S. 467, 489 (1992) (“the court’s end purpose must be to remedy the violation.”). This is true in California as well. See *Am. Civil Rights Found. v. LAUSD*, 169 Cal. App. 4th 436, 452 (2008) (trial court’s 1981 order remains in effect). Indeed, it is precisely because enrollment, funding, facilities, and resources of school districts change on a year-to-year basis that courts find it necessary to continue to oversee school districts that are known violators of the law. *Brown II*, 349 U.S. at 300 (explaining that retaining jurisdiction is necessary because of changes in attendance, personnel, boundaries, etc.); see also *Brown v. Unified Sch. Dist. No. 501*, 56 F. Supp. 2d 1212, 1214 (D. Kan. 1999) (ending nearly fifty years of court supervision after school district demonstrated it had “complied in good faith with the mandates of the court over a reasonable period of time.”).

If charter schools have no way to enforce Proposition 39 judgments, then any school district could thwart the law by strategically prolonging litigation and forcing a charter school to file a new lawsuit each school year. Such a strategy not only wastes judicial resources, but also drains the charter school’s resources because the attorneys’ fees required for litigation may significantly reduce the amount of damages for the lost value of the public facilities that the school ultimately recovers, a process that may itself take years.

For example, New West Charter Middle School sued Los Angeles Unified School District after it received an outright denial to its Proposition 39 request for the 2008-09 school year. *New West Charter Middle Sch. v. LAUSD*, 187 Cal. App. 4th 831, 835 (2010) (LAUSD initially offered a facility, which the charter school accepted, but then it reneged and refused to make another offer.). The trial court issued a writ of mandate requiring the district to make an offer. *Id.* at 835. The district subsequently made an inadequate offer. *Id.* at 835, 837. The court fined the district for violating the writ of mandate and awarded damages to the charter school. But the fine was a paltry \$1,000, the maximum allowed under Code of Civ. Proc. § 1097. The charter school was awarded \$187,356 in damages, but that was not enough to even cover the attorney's fees of \$266,000. *New West Charter Middle School*, 187 Cal. App. 4th at 850-51. Those fees were finally awarded in 2010, two years after the school was entitled to use the school space.² *See id.*

The necessity of courts retaining jurisdiction to ensure continued Proposition 39 compliance is further underscored by the litigation here. It took

² New West Charter Middle School never did receive an adequate facilities request, and the education establishment continues to object to the success of New West Charter Middle School. *See United Teachers Los Angeles, Stop New West Charter Expansion and the Impact on Public Schools* (Feb. 23, 2012), available at <http://www.utla.net/node/3640> (last visited Aug. 19, 2013) (discussing a campaign to prevent New West Charter Middle School from expanding). In 2013, New West Charter Middle School entered into a long-term lease with a private landlord.

Bullis three years to have this Court rule that the school district's 2009-2010 facilities offer was not Proposition 39 compliant. *See* App. Op. Br. at 6-11; Resp. Br. at 6-8. And, assuming this Court renders a decision in this case by 2014, it will have been another three years before Bullis learns whether this Court's decision is enforceable. The solution is simple and supported by decades of California law: where a school district is a known violator of Proposition 39, the trial court must oversee the school district until it demonstrates it can comply in "good faith with the mandates of the court over a reasonable period of time." *Brown*, 56 F. Supp. 2d at 1214; *see also Gonzales*, 213 Cal. App. 2d at 820.

II

REQUIRING TRIAL COURTS TO ENFORCE WRITS SECURED AFTER A SUCCESSFUL PROPOSITION 39 ENFORCEMENT ACTION SERVES VOTER INTENT AND HARMONIZES PROPOSITION 39 WITH THE CHARTER SCHOOL ACT

When enforcing Proposition 39, courts should be mindful of the voters that adopted it, *Envtl. Charter High Sch. v. Centinela Valley Union High Sch. Dist.*, 122 Cal. App. 4th 139, 148-49 (2004), and also strive "to harmonize it with the entire statutory scheme affecting charter schools." *Ridgecrest Charter Sch. v. Sierra Sands Unified Sch. Dist.*, 130 Cal. App. 4th 986, 1002 (2005). With the Charter School Act of 1992, the Legislature wanted to "encourage" the creation of more charter schools so that they become "an integral part of

the California education system.” Educ. Code § 47605(b). California voters approved Proposition 39 in 2000 to ensure that charter school students’ needs are given the same consideration as traditional public school students. *Bullis*, 200 Cal. App. at 1040 (quoting *Ridgecrest*, 130 Cal. App. 4th at 999). This Court should enable charter schools to flourish by giving them a meaningful way to enforce their facility rights. In order to effectuate the purpose of Proposition 39, and continue to ensure that charter schools remain an “integral part of the California Education system,” charter schools must be able to enforce the writs they secure after years of litigation.

A. School Districts Cannot Continue to Contravene the Legislature That Passed the Charter School Act to Improve Opportunities for California Students

The Legislature created charter schools in 1992, intending for them to be laboratories of innovation, free from the bureaucracy and entrenched methods of regular public schools. Charter Schools Act of 1992, Educ. Code § 47600, *et seq.* Charter schools “provide opportunities for teachers, parents, pupils, and community members to establish and maintain schools that operate independently from the existing school district structure.” Educ. Code § 47601. They can focus on meeting students’ needs, freed from the “complex tangle of rules” that characterize the public school system and that “sap creativity and innovation, thwart accountability and undermine the effective education of our children.” *Wilson*, 75 Cal. App. 4th at 1130.

Charter schools give parents and students an alternative to traditional public school. That choice allows them to hold schools accountable by leaving a school that does not meet their needs. “When families are empowered with choices—even limited ones—with respect to where their children are educated, schools must begin to treat parents and students as customers to be served rather than as a captive audience.” Matthew Ladner & Matthew J. Brouillette, *The Impact of Charter Schools and Public School Choice on Public School Districts in Wayne County, Michigan*, 45 How. L.J. 395, 396 (2002). That choice fulfills the Legislature’s goal for charter schools to “provide vigorous competition within the public school system to stimulate continual improvements in all public schools.” Educ. Code § 47601(g).

But competition also generates resistance from some school district bureaucracies. Terri Hardy, *Commission Says Local Districts, State Impeding Charter Schools*, L.A. Daily News, Oct. 19, 1995, at N8, *available at* 1995 WLNR 1387624 (last visited Aug. 19, 2013). Though charter schools avoid much of the red tape faced by traditional schools, they frequently encounter recalcitrance, if not flat-out opposition, from school districts. It is often difficult for charter schools to get the resources they are entitled to by law.

Charter schools are supposed to be funded on an equal basis as regular public schools. Educ. Code § 47630(a) (“It is the intent of the Legislature that each charter school be provided with operational funding that is equal to the

total funding that would be available to a similar school district serving a similar pupil population[.]”). Contrary to the plain language of this law, they have consistently received less funding per student. See Thomas B. Fordham Institute, *Charter School Funding: Inequity’s Next Frontier* 23, Progress Analytics Institute (2005) (California charter schools receiving (finding an average \$2,223 funding gap per student in 2002-03 school year)³; Mac Taylor, *Comparing Funding for Charter Schools and Their School District Peers* 1, Legislative Analyst’s Office (2012) (finding \$395 funding gap in 2010-11 for operational funding and more if other funding sources considered). The problem compounds when charter schools do not have equal access to public facilities. School facilities often drain 20 percent of a charter school’s budget. Jeanette M. Curtis, *A Fighting Chance: Inequities in Charter School Funding and Strategies for Achieving Equal Access to Public School Funds*, 55 How. L.J. 1057, 1071 (2012).

These disparities—especially lack of facility funding—have made it financially difficult for charter schools to survive. *Id.* at 1069-70; *see also*, Doug Smith, *A School From Scratch*, L.A. Times, Jan. 6, 1999, available at 1999 WLNR 6665315 (last visited Aug. 19, 2013) (charter school almost forced to close because of lack of facilities funding and no right to public

³ Available at http://www.publiccharters.org/data/files/Publication_docs/644_file_Charter_School_Funding_2005_FINAL_20110402T222337.pdf (last visited Aug. 19, 2013).

facilities pre-Proposition 39). Financial deficiencies, particularly lack of funding for school facilities, have been one of the “the greatest cause[s] of charter school failure.” Curtis, *supra*, at 1073 (“studies have indicated that facilities funding is the biggest cause of the funding disparity, ultimately creating a significant problem for charter school development and sustainability.”). It also makes it difficult for charter schools to open their doors or expand. *Id.* at 1069-70.

This lack of equal funding for school facilities was, of course, the primary motivation behind California voters adopting Proposition 39 in 2000. Yet, the tribulations suffered by charter schools before Proposition 39 is necessary to understanding how the Charter School Act is to be harmonized with that landmark Proposition. Viewed as a whole, it is clear the Legislature and California voters want charter schools to have the *means* to ensure that school districts treat charter school students fairly. That is why Proposition 39 was necessary, and that is why charter schools need to be able to enforce a successful Proposition 39 judgment.

**B. Voters Intended that School Districts
Stop Neglecting Charter School Students**

California voters intended to help charter schools avoid funding and facility inequities when they passed Proposition 39 in 2000, requiring school districts to share “fairly” school facilities, because “[s]tudents in public charter schools should be entitled to reasonable access to a safe and secure learning

environment.” Proposition 39, Schools and School Districts—Financial Accountability—Smaller Classes, 2000 Cal. Legis. Serv. § 2(e). Proposition 39 amended the state’s charter school law, plainly stating “that public school facilities should be shared fairly among all public school pupils, including those in charter schools.” Educ. Code § 47614(a). Proposition 39 also made it easier for districts to provide space to charter schools, “reduc[ing] the required voter approval from two-thirds to 55 percent for a school facility bond proposition.” *Taxpayers for Accountable Sch. Bond Spending v. San Diego Unified Sch. Dist.*, 215 Cal. App. 4th 1013, 1025 (2013).

Prior to the enactment of Proposition 39, charter schools had “very limited” access to district facilities. A “charter school was entitled to use district facilities only if that would not interfere with the district’s use of them.” *Ridgecrest*, 130 Cal. App. 4th at 999. That resulted in little or no access for most charter schools. *See Smith, supra* (survey found that less than half of California charter schools were using public facilities in 1998). Unfortunately, even after Proposition 39, many charter schools still cannot access their fair share of public facilities.

School districts continue to avoid sharing facilities with charter school students. For example, charter schools have faced an uphill fight when seeking facilities from Los Angeles Unified School District. In 2009, “when 81 charter schools applied for facilities under Proposition 39,” the district

made only 45 offers and “none of them were compliant, or even sufficient, to meet classroom and student needs.” Connie Llanos, *Judge’s Ruling Allows Lawsuit by Charters to Move Forward*, L.A. Daily News, Nov. 11, 2010, at A7, available at 2010 WLNR 22585570 (last visited Aug. 19, 2013). Many of those charter schools brought lawsuits to enforce their rights. See, e.g., *L.A. Int’l Charter High Sch. v. LAUSD*, 209 Cal. App. 4th 1348, 1354 (2012); *New West Charter Middle Sch.*, 187 Cal. App. 4th 831; *Cal. Charter Schs. Ass’n v. LAUSD*, 151 Cal. Rptr. 3d 585 (2013). Similarly, the San Diego Unified School District has stonewalled charter schools. “Two dozen publicly funded charter schools” fought with the district “over their right to lease district buildings,” ultimately forcing two charter schools to file “a lawsuit against the district over the matter.” Maureen Magee, *Charter School Fight at District’s Door*, San Diego Union-Tribune, Mar. 15, 2006, available at 2006 WLNR 4460420 (last visited Aug. 19, 2013).

In *Ridgecrest Charter*, 130 Cal. App. 4th 986, the district offered the school use of “9.5 classrooms at five different school sites separated by a total of 65 miles,” in violation of Proposition 39’s requirement that school districts provide contiguous facilities. *Id.* at 991. Other charter schools have struggled with districts improperly claiming that the charter school made an invalid Proposition 39 claim. See *Sequoia Union High Sch. Dist. v. Aurora Charter High Sch.*, 112 Cal. App. 4th 185 (2003) (arguing the charter school’s

attendance projections unreasonable, district challenged writ of mandate that enforced Proposition 39 rights, and lost). In spite of California voters' best efforts to ensure that charter schools are given funds and facilities commensurate with traditional public schools, school districts' refusal to cooperate and comply with the law has created a mass of litigation. *See, e.g., Everest Charter Sch. v. Sequoia Union High Sch. Dist.*, No. CIV 486211 (San Mateo Super. Ct. Petition for Writ of Mandate filed July 7, 2009) (Proposition 39 litigation over school district's attempt to house the school on an undeveloped lot devoid of nonteaching spaces, such as libraries, gymnasiums, or fields); *Meadow Arts & Tech. Elementary Sch. v. Conejo Valley Unified Sch. Dist.*, No. 56-2009-00336393-CU-WM-SIM (Ventura Super. Ct. Petition for Writ of Mandate filed Jan. 27, 2009) (Proposition 39 litigation over school district citing decision).⁴

The persistent attitude of some school districts is that “charter school students are not ‘district’ students, with the implication their needs therefore must yield to those of the students in the district run schools in deciding how to allocate space among them.” *Ridgecrest Charter*, 130 Cal. App. 4th at 998. Proposition 39 was a direct response to this attitude, and yet the antagonism

⁴ The unpublished decisions cited in this brief do not stand for any legal proposition, and should not be regarded as authoritative or precedential in any way. *See* Cal. R. Ct. 8.1115. They are only cited to establish that they exist, and that Proposition 39 litigation is abundant in California.

persists. So long as school districts perceive charter schools as their adversaries, they will seek to undermine the requirements of Proposition 39.

In spite of these challenges, California families see charter schools as an excellent public school option for children. As of last year, 1,065 charter schools educated over 484,000 students, a 17 percent increase from the year before. Press Release, CCSA, *California Charter Schools Grow to Over 1,000 for the 2012-13 School Year*, Oct. 23, 2012.⁵ Approximately 70,000 additional students were on waiting lists, hoping to attend one of the state's charter schools. *Id.* Without the ability to enforce their Proposition 39 rights, these waiting lists will only grow as charter schools struggle with inadequate facilities.

CONCLUSION

The massive expense and delays involved with a Proposition 39 lawsuit could crush a burgeoning charter school or halt a popular school's growth. But it is not the charter institutions that suffer the greatest loss; it is the students. No financial remedy awarded to a charter school can make up for the students that could not attend the school because it lacked adequate facilities. There is no remedy for the child denied the right to attend the school best suited for him or her. While another few years may not seem like much for a faceless

⁵ Available at <http://www.calcharters.org/blog/2012/10/california-charter-schools-grow-to-over-1000-for-the-2012-13-school-year-while-student-enrollment-gr.html> (last visited Aug.19, 2013).

institution to restart and reenter the cycle of litigation, those years are crucial to the school children who can never get those formative years back.

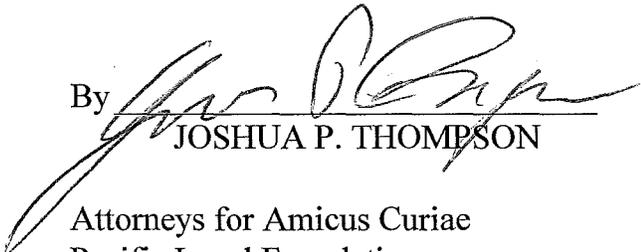
California courts have long recognized the need to enforce writs and judgments when the governmental body has demonstrated a willingness to continue to violate the law. Recognizing the ability of an aggrieved charter school to enforce a Proposition 39 judgment is the proper method for ensuring that school districts are not able to ignore the needs of charter school students. The decision below should be reversed.

DATED: September 16, 2013.

Respectfully submitted,

MERIEM L. HUBBARD
JOSHUA P. THOMPSON

By

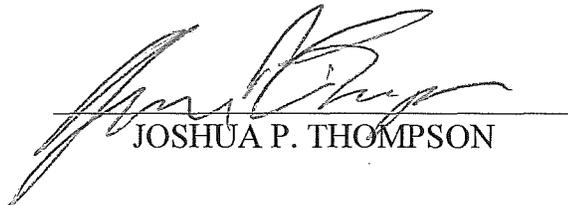

JOSHUA P. THOMPSON

Attorneys for Amicus Curiae
Pacific Legal Foundation

CERTIFICATE OF COMPLIANCE

Pursuant to California Rule of Court 8.204(c)(1), I hereby certify that the foregoing APPLICATION TO FILE AND BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF PLAINTIFF AND APPELLANT AND IN SUPPORT OF REVERSAL is proportionately spaced, has a typeface of 13 points or more, and contains 4,406 words.

DATED: September 16, 2013.



JOSHUA P. THOMPSON

DECLARATION OF SERVICE

I, Barbara A. Siebert, declare as follows:

I am a resident of the State of California, residing or employed in Sacramento, California. I am over the age of 18 years and am not a party to the above-entitled action. My business address is 930 G Street, Sacramento, California 95814.

On September 16, 2013, true copies of APPLICATION TO FILE AND BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF PLAINTIFF AND APPELLANT AND IN SUPPORT OF REVERSAL were placed in envelopes addressed to:

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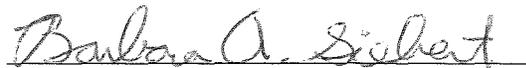
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which envelopes, with postage thereon fully prepaid, were then sealed and deposited in a mailbox regularly maintained by the United States Postal Service in Sacramento, California.

On September 16, 2013, a true copy of APPLICATION TO FILE AND BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF PLAINTIFF AND APPELLANT AND IN SUPPORT OF REVERSAL was sent electronically to:

COURT CLERK
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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 16th day of September, 2013, at Sacramento, California.


BARBARA A. SIEBERT