

**In the Supreme Court of Pennsylvania**  
**MIDDLE DISTRICT**

**No. 43 MAP 2015**

**LEHIGH VALLEY DUAL LANGUAGE CHARTER SCHOOL,**

*Appellee,*

**v.**

**STATE CHARTER SCHOOL APPEAL BOARD,**

**BETHLEHEM AREA SCHOOL DISTRICT,**

*Intervenor - Appellant.*

Appeal from the September 10, 2014,  
Order of the Commonwealth Court of Pennsylvania,  
No. 2010 C.D. 2013, Reversing the October 23, 2013, Order of the  
State Charter School Appeal Board, No. CAB 2013-07, Quashing the  
Appeal by Lehigh Valley Dual Language Charter School from the  
Denial by Bethlehem Area School District of Lehigh's Request  
To Amend Its Charter and Expand Its Operations to a Second Location

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## **IDENTITY AND INTEREST OF *AMICUS CURIAE***

Pacific Legal Foundation (PLF) is a nonprofit, tax-exempt foundation organized for the purpose of litigating matters affecting the public interest. Founded in 1973, PLF provides a voice in the courts for citizens committed to limited government, private property rights, individual freedom, and free enterprise. PLF supports school choice programs across the country because they empower parents to select schools that best fit the needs of their children.

To that end, PLF has participated in the United States Supreme Court in cases involving kindergarten through 12th grade (K-12) education reform, including *Arizona Christian Sch. Tuition Org. v. Winn*, 131 S. Ct. 1436 (2011) (tuition tax credit); *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002) (Ohio voucher programs); and *Mitchell v. Helms*, 530 U.S. 793 (2000) (state and federal school aid programs). PLF has also participated in state court cases involving education reform and school choice, including *Taxpayers for Public Educ. v. Douglas Cnty. Sch. Dist.*, 2015 WL 3948220 (Colo. June 29, 2015) (scholarship program); *California Charter Schools Ass'n v. Los Angeles Unified Sch. Dist.*, 345 P.3d 911 (Cal. 2015) (charter school facilities); *Duncan v. State*, 102 A.3d 913 (N.H. 2014) (tax credit scholarship program); *Atlanta Indep. Sch. Sys. v. Atlanta Neighborhood Charter Sch., Inc.*, 748 S.E.2d 884 (Ga. 2013) (charter school funding); *Meredith v. Pence*, 984 N.E.2d 1213 (Ind. 2013) (school voucher program); *Cain v. Horne*, 202 P.3d 1178 (Ariz. 2009)

(school voucher program); and *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006) (opportunity scholarship program).

## **INTRODUCTION AND SUMMARY OF ARGUMENT**

Charter schools are public, non-sectarian, and non-discriminatory schools that inject choice into stale education systems, and create positive results for children. *See* Pennsylvania Coalition of Public Charter Schools, *What is a Charter School?*<sup>1</sup> Pennsylvania is one of 43 states with charter schools, which offer parents a choice in how their child is educated. *See* National Alliance for Public Charter Schools, *Measuring Up to the Model: A Ranking of State Charter School Laws* 6-7 (Jan. 2015)<sup>2</sup> (compiling states with charter school laws); *see also* 24 P.S. § 17-1701-A *et seq.* (“Charter School Law”). This case arises out of the success of charter schools in meeting the needs of both parents and students: When a successful charter school outgrows its facilities, how must the state accommodate its needs to expand?

The Pennsylvania Charter School Law provides that “[a] charter school may be located in an existing public school building, in a part of an existing public school building, in space provided on a privately owned site, in a public building or in any

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<sup>1</sup> Available at <http://pacharters.org/resource-center/why-charters/> (last visited July 13, 2015).

<sup>2</sup> Available at [http://www.publiccharters.org/wp-content/uploads/2015/01/model\\_law\\_2015.pdf](http://www.publiccharters.org/wp-content/uploads/2015/01/model_law_2015.pdf) (last visited July 13, 2015).

suitable location.” 24 P.S. § 17-1722-A. The issue in this case is whether “location” limits charter schools to operating out of *one* location.

“Location” should not be read to limit successful charter schools to a single site. Common principles of statutory construction dictate that the singular includes the plural. *See, e.g., Summit House Condo. v. Commonwealth*, 479 A.2d 1162, 1164 (Pa. Cmwlth. 1984) (interpreting exemption for electric services “purchased directly by the user thereof solely for his own residential use” to include services purchased by “users thereof solely for *their* own use”) (emphasis in the original). Just as “user” reasonably includes “users,” the word “location” in the Charter School Law reasonably allows a charter school to operate out of multiple locations.

Despite Bethlehem Area School District’s claims to the contrary, the statutory canon of *expressio unius est exclusio alterius* does not dictate a different result. Its use as an aid to statutory interpretation is overcome when there are “contrary indications that adopting a particular rule or statute was probably not meant to signal any exclusion.” *United States v. Vonn*, 535 U.S. 55, 64 (2002). Here, the statutory provision allowing charter schools in Philadelphia to operate out of many locations is just one of many special provisions focusing on the Philadelphia School District. *See, e.g., 24 P.S. §17-1726-A(d)* (subjecting the Philadelphia School District to additional requirements concerning the documentation of its transportation policy). The special provisions for the Philadelphia School District, however, do not change

how the Charter School Law operates in the rest of the state. *Expressio unius* simply does not apply here. This Court should therefore allow successful charter schools to open a second location as a straightforward matter of statutory interpretation.

Furthermore, it is good policy to allow charter schools to operate out of multiple locations. Charter schools should be given the flexibility they need to thrive, so that they can effectuate the General Assembly's intent to "increase learning opportunities," 24 P.S. § 17-1702-A(2), "provide parents and pupils with expanded choices," 24 P.S. § 17-1702-A(5), and hold schools "accountable for meeting measurable academic standards." 24 P.S. § 17-1702-A(6). Charter schools have been empirically shown to boost student achievement, improve parental satisfaction, and reduce class size. *See* National Alliance for Public Charter Schools, *Public Charter School Success: A Summary of the Current Research on Public Charters' Effectiveness at Improving Student Achievement* 1 (Apr. 2013).<sup>3</sup> For the following reasons, the Court should hold that the Charter School Law allows successful charter schools to expand into multiple locations.

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<sup>3</sup> Available at [http://www.publiccharters.org/wp-content/uploads/2014/01/NAPCS\\_2013\\_Research\\_Summary\\_20130424T145509.pdf](http://www.publiccharters.org/wp-content/uploads/2014/01/NAPCS_2013_Research_Summary_20130424T145509.pdf) (last visited July 13, 2015).

## ARGUMENT

### I

#### **THE CHARTER SCHOOL LAW UNAMBIGUOUSLY ALLOWS A CHARTER SCHOOL TO OPERATE OUT OF MULTIPLE LOCATIONS**

The primary goal in statutory interpretation is “to ascertain and effectuate the intention of the General Assembly.” 1 Pa. C.S. § 1921(a). The disputed provision of the Charter School Law provides that “[a] charter school may be located in an existing public school building, in a part of an existing public school building, in space provided on a privately owned site, in a public building or in any suitable location.” 24 P.S. § 17-1722-A. In order to determine the meaning of “location,” the Court should first interpret the statute according to its common and approved usage, that if possible, gives effect to all of its provisions. 1 Pa. C.S. § 1921(a). “[T]he best indication of legislative intent is the plain language of a statute.” *Cash America Net of Nevada, LLC v. Commonwealth, Dep’t of Banking*, 8 A.3d 282, 289 (Pa. 2010).

A fundamental principle of statutory interpretation requires courts to read the singular to include the plural and the plural to include the singular unless there is clear evidence of legislative intent to the contrary. *See* 1 Pa. C.S. § 1902 (codifying this rule). Applying this maxim, Pennsylvania courts have repeatedly held that a word in the singular form can apply to both the singular and the plural. *See In re L.Z.*, 111

A.3d 1164, 1182 (Pa. 2015) (a law that imposed liability for child abuse on a “parent or other person responsible for the welfare of the child” also applied in multiple caregiver cases); *Commonwealth v. Fields*, 107 A.3d 738, 743 (Pa. 2014) (a Pennsylvania sentencing statute providing for “a minimum sentence of at least ten years” allowed for multiple sentence enhancements); *In re Henderson’s Estate*, 185 A. 819, 821 (Pa. 1936) (a will allowing testator’s wife to designate an “organization” as a beneficiary also allowed her to designate multiple organizations as such, since “[c]ases are not uncommon . . . where the law construes the singular to include the plural”); *Cleveland Asphalt Inc. v. Coalition for a Fair and Safe Workplace*, 886 A.2d 271, 283 (Pa. Super. 2005) (“[T]he term ‘reasonable counsel fee’ . . . includes the plural ‘fees’ and connotes the plural usage of the word ‘counsel.’”); *Neill v. Bedminster Twp. Zoning Hearing Bd.*, 592 A.2d 1385, 1386 n.1 (Pa. Cmwlt. 1991) (provision in Township Ordinance permitting the conversion of “an existing building” into multiple dwellings did not limit the number of conversions under the Ordinance to one per lot); *Commonwealth v. Adams*, 524 A.2d 1375, 1378 (Pa. Super. 1987) (provision allowing government to wiretap a communication if “one of the parties to the communication has given prior consent” allowed government officials to wiretap multiple conversations); *Summit House Condo. v. Commonwealth*, 479 A.2d 1162, 1164 (Pa. Cmwlt. 1984) (exemption for electric services “purchased directly by user

thereof solely for his own residential use” includes services purchased by “users thereof solely for *their* own use”) (emphasis in the original).

This Court’s decision in *Light of Life Ministries, Inc. v. Cross Creek Township*, 746 A.2d 571 (Pa. 2000) is instructive. It involved a dispute over the meaning of “dwelling” in a township’s zoning ordinance. The appellant in that case was a nonprofit organization that provided food and shelter to the emotionally and sociologically disabled on a 322-acre tract of land. *Id.* at 572. The township classified the land as “agricultural” under its zoning ordinance, but allowed the nonprofit to operate as a conditional-use group home. *Id.* Litigation began after the township blocked the non-profit’s attempt to expand its conditional use so that it could accommodate 160 clients and staff. *Id.* The Commonwealth Court held in favor of the township, holding that because “dwelling” is singular, a group or residence home can only consist of a single building. *Id.* at 573. This Court rejected such a “tortured interpretation” and reversed the Commonwealth Court on the basis that “the singular shall include the plural.” *Id.*

Just as the word “dwelling” can encompass multiple dwellings, the word “location” in Section 1722-A of the Charter School Law is presumed to encompass multiple locations. This construction is “simply a matter of common sense and everyday linguistic experience[.]” Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 130 (2012) (discussing the “singular includes the

plural” rule). A statute that makes it unlawful for someone to “set off a rocket within the city limits,” for example, does not exempt someone who sets off two rockets or a string of 100. *Id.*

Despite the School District’s contentions to the contrary, the canon of *expressio unius* does not dictate a different result. The canon of *expressio unius* “is not of universal application, but is to be applied only as an aid in arriving at intention and not to defeat apparent intention.” *Fazio v. Pittsburgh Rys. Co.*, 182 A. 696, 698 (Pa. 1936). As this Court has long recognized, automatic application of *expressio unius* “can sometimes thwart” legislative intent. *Consumer Educ. and Protective Ass’n v. Nolan*, 368 A.2d 675, 684 (Pa. 1977); *see also St. Elizabeth’s Child Care Ctr. v. Dep’t of Public Welfare*, 963 A.2d 1274, 1278 (Pa. 2009) (reversing the Commonwealth Court for “relying exclusively on *expressio unius*”). It is only when the “words of the statute are not explicit” on the point at issue that resort to canons of statutory construction is appropriate. 1 Pa. C.S. § 1921(c). Here, there is no need to resort to *expressio unius* because the statutory text is clear. “Location” in Section 1722-A naturally includes multiple locations.

In any event, *expressio unius* does not help the School District. The *expressio unius* canon applies to an item *conspicuously* absent from a list of related ones, leading to the inference that the General Assembly excluded it on purpose. *See* Scalia & Garner, *supra* at 107; *see also Commonwealth, Dep’t of Transp. v. Mosites Constr.*



*Co.*, 494 A.2d 41, 43 (Pa. Cmwlth. 1985) (“The maxim *expressio unius est exclusio alterius* translates into the proposition that the mention of particular items implies the purposeful exclusion of other items of the same general character.”); *Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 168 (2003) (emphasizing that the canon does not apply “unless it is fair to suppose that Congress considered the unnamed possibility and meant to say no to it”). The *expressio unius* canon does not apply to special provisions discussing particular issues, giving rise to the inference that “items not mentioned were excluded by . . . inadvertence.” *Id.* For example, when a statute prohibiting automobile insurance companies from cancelling a policy on enumerated grounds does not mention drunk driving, a court can reasonably conclude that the General Assembly did not intend to protect drunk drivers from insurance cancellation. *See Samilo v. Commonwealth, Ins. Dep’t*, 510 A.2d 412, 413-14 (Pa. Cmwlth. 1986). There, the General Assembly’s omission of “drunk driving” in the list of protected activities could hardly have been an oversight, given the frequent occurrence of such activity across the United States. *See Center for Disease Control and Prevention, Impaired Driving: Get the Facts*<sup>4</sup> (noting that there are “112 million self-reported episodes of alcohol-impaired driving among U.S. adults each year”).

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<sup>4</sup> Available at [http://www.cdc.gov/motorvehiclesafety/impaired\\_driving/impaired-drv\\_factsheet.html](http://www.cdc.gov/motorvehiclesafety/impaired_driving/impaired-drv_factsheet.html) (last visited July 13, 2015).

Here, however, the *expressio unius* canon is overcome by “contrary indications that adopting a particular rule or statute was probably not meant to signal any exclusion.” *Vonn*, 535 U.S. at 64. The School District argues that by expressly allowing charter schools in school districts “of the first class”—that is, the Philadelphia School District<sup>5</sup>—to open up new schools at multiple locations, the General Assembly implicitly prohibited charter schools in other school districts from doing the same. Yet the provision allowing charter schools in the first class school district to operate out of multiple locations represents just one of many special provisions for the Philadelphia School District. *See* 24 P.S. §§ 17-1720-A(b)(2) (charter renewal); 17-1720-A(b)(3) (same); 17-1726-A(a.1) (transportation); 17-1726-A(d) (documentation for transportation policy); 17-1729-A(a.1) (performance targets). Enacting special provisions for the unique challenges presented by Philadelphia is nothing new for the General Assembly. *See City of Philadelphia v. Commonwealth*, 838 A.2d 566, 572 (Pa. 2003) (discussing a legislative amendment for special provisions for first class cities in the areas of parking, bonding, bankruptcy, and so on). As the General Assembly itself argued, such provisions are not meant to change the rights of municipalities in Pennsylvania as a whole, but to address the “diverse topics related to . . . municipal authorities [in Philadelphia] in one bill.” Brief for

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<sup>5</sup> *See D.C. v. Sch. Dist. of Philadelphia*, 879 A.2d 408, 409 (Pa. Cmwlth. 2005) (“The Philadelphia School District is the only school district of the first class among the 500 school districts.”).

Respondent at 34, *City of Philadelphia v. Commonwealth*, 838 A.2d 566 (Pa. 2003) (5 EAP 2003).

The establishment of special rules for schools in Philadelphia thus says nothing about schools in other districts. And it does nothing to preclude children in school districts statewide from having the same sort of additional “learning opportunities,” “expanded choices,” and “accountability” that the General Assembly sought to provide for every child in Pennsylvania through the Charter School Law. 24 P.S. §17-1702-A. This Court should effectuate the General Assembly’s intent by using basic statutory-interpretation principles to enforce its plain text. *See Commonwealth v. Griffith*, 32 A.3d 1231, 1235 (Pa. 2011) (“In general, the best indication of legislative intent is the plain text of the statute.”).

## II

### **SCHOOLS OPERATING OUT OF MULTIPLE LOCATIONS PROVIDE MORE OPPORTUNITIES TO PENNSYLVANIA CHILDREN**

#### **A. Charter Schools Encourage Competition, Which Benefit Students, Parents, and Traditional Public Schools**

The General Assembly adopted the Pennsylvania Charter School Law for the same reasons that forty-two other states have public charter schools: to give students an opportunity for a better education. *See National Alliance for Public Charter Schools, Measuring Up to the Model: A Ranking of State Charter School Laws* 6-7

(January 2015) (compiling states with charter school laws).<sup>6</sup> Indeed, in adopting the Charter School Law, the General Assembly sought to “increase learning opportunities,” 24 P.S. § 17-1702-A(2), “provide parents and pupils with expanded choices,” 24 P.S. § 17-1702-A(5), and hold schools “accountable for meeting measurable academic standards.” 24 P.S. § 17-1702-A(6).

The General Assembly was responding to a crisis in public education. Since at least the early 1980s, commentators have recognized that something has gone profoundly wrong with the traditional public education system. A landmark 1983 study observed, among other discouraging facts, that: (1) 13 percent of the nation’s seventeen-year-olds were functionally illiterate, reaching 40 percent among minorities; (2) 40 percent of seventeen-year-olds could not draw inferences from written materials, 80 percent could not write a persuasive essay, and two-thirds could not solve a math problem requiring several steps; and (3) there have been steady declines in science achievement and SAT scores. *See generally* The National Commission on Excellence in Education, *A Nation at Risk: The Imperative for Education Reform* (Apr. 1983).<sup>7</sup>

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<sup>6</sup> Available at [http://www.publiccharters.org/wp-content/uploads/2015/01/model\\_law\\_2015.pdf](http://www.publiccharters.org/wp-content/uploads/2015/01/model_law_2015.pdf) (last visited July 13, 2015).

<sup>7</sup> Available at <http://www2.ed.gov/pubs/NatAtRisk/risk.html> (last visited July 13, 2015).

By the 1990s, not much had changed: The Third International Mathematics and Science Study, “which compared half a million students in over forty-one countries at three grade levels,” determined that “American twelfth graders were so inadequate on their math and science exams, that only students from Cyprus and South Africa scored lower.” Lewis D. Solomon, *Edison Schools and the Privatization of K-12 Public Education: A Legal and Policy Analysis*, 30 Fordham Urb. L.J. 1281, 1282 (2003). The situation was even worse in inner-city schools, marked by “low academic performance, increased violence, high dropout rates, and demoralized students and teachers.” Not only had public schools become de facto segregated by race and socioeconomic status, James E. Ryan & Michael Heise, *The Political Economy of School Choice*, 111 Yale L.J. 2043, 2093 (2002), but “major achievement gaps [persisted] between disadvantaged minority children and their more affluent peers.” Deanna R. Peterson, *Leaving No Child Behind: Why Were Charter Schools Formed and What Makes Them Successful?*, 12 J. Gender Race & Just. 377, 377 (2009).

The problems inherent in the modern education system particularly hurt inner-city families, who lack the financial ability to exit a failing school system. Clint Bolick, *Solving the Education Crisis Through Parental Choice*, 11 Stan. L. & Pol’y Rev. 245, 246 (2000). Attempts to remedy these problems through tougher standards and increased funding failed, proving that government-run schools could not reform themselves. 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, 399-403 (2002).

Charter Schools, on the other hand, are extremely effective at improving educational outcomes through “a system of choice and competition.” Bolick, *supra*, at 249. With choice comes accountability: the fact that no one is compelled to attend a charter school makes it much easier to hold students, teachers, and parents accountable for academic failures as well as successes. See Ryan & Heise, *supra*, at 2074. When families are empowered with choice, schools must begin to treat parents and students as “customers to be served rather than as a captive audience.” Ladner & Brouillette, *supra*, at 396.

This leads to better outcomes across all socioeconomic and racial groups. Gerard Robinson & Edward Chang, National Alliance for Public Charter Schools, *Issue Brief: The Color of Success: Black Student Achievement in Public Charter Schools 2* (June 2008).<sup>8</sup> These successes are seen nationwide. A recent review of scholarship reveals that charter schools improve student achievement. Friedman Foundation, *School Choice and Economic Growth: A Research Synthesis on How Market Forces Can Fuel Educational Attainment 28-29* (Feb. 2015)<sup>9</sup> (collecting

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<sup>8</sup> Available at [http://publiccharters.org/wp-content/uploads/2014/01/The\\_Color\\_of\\_Success\\_Full\\_Report\\_20110402T222340.pdf](http://publiccharters.org/wp-content/uploads/2014/01/The_Color_of_Success_Full_Report_20110402T222340.pdf) (last visited July 13, 2015).

<sup>9</sup> Available at <http://www.edchoice.org/CMSModules/EdChoice/FileLibrary/1083/School-Choice-and-Economic-Growth.pdf> (last visited July 13, 2015).

evidence that school choice leads to better outcomes for children and reduced costs for taxpayers); *see also* National Alliance for Public Charter Schools, *Public Charter School Success: A Summary of the Current Research on Public Charters' Effectiveness at Improving Student Achievement* 1 (Apr. 2013)<sup>10</sup> (finding that public charter schools outperform traditional public schools). In the last four years, thirteen published studies have shown that charter schools are outperforming their traditional public school peers. *Id.* The benefits of charter schools are not limited to their own students. The positive ripple effects that charter schools have on non-charter public schools are significant. *See* David A. DeSchryver, *Strong Charter School Laws: A Necessary Condition for the "Ripple Effect,"* 11 *Stan. L. & Pol'y Rev.* 311, 312-17 (2000) (discussing various ripple effects, including "competition and new management assumptions," operational efficiency, and qualitative effects).

The General Assembly, in accordance with the overwhelming majority of state legislatures throughout the country, saw the benefits of "providing parents and students with expanded choices in public education." *Northside Urban Pathways Charter Sch. v. State Charter Sch. Appeal Bd.*, 56 A.3d 80, 85 (Pa. Cmwlth. 2012). Yet "many charter schools have waiting lists" and are only able to accommodate students who gain admission "based upon a lottery." Pennsylvania Coalition of Public

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<sup>10</sup> Available at [http://www.publiccharters.org/wp-content/uploads/2014/01/NAPCS\\_2013\\_Research\\_Summary\\_20130424T145509.pdf](http://www.publiccharters.org/wp-content/uploads/2014/01/NAPCS_2013_Research_Summary_20130424T145509.pdf) (last visited July 13, 2015).

Charter Schools, *What is a Charter School?*<sup>11</sup> This Court should allow successful charter schools to expand, so that the educational opportunities that come with expanded choice are not distributed by lottery to a limited number of lucky students, but available to every child in Pennsylvania.

## **B. Reducing Class Size Improves Educational Outcomes**

Charter schools constrained to a single location must continue to reject students based on sheer randomness, or cram larger numbers of students into its limited facilities. Yet as Pennsylvania courts have recognized for the better half of the last century, smaller classrooms are directly correlated with educational quality. *See Pa. Human Relations Comm'n v. Chester Sch. Dist.*, 40 Pa. D. & C. 2d 493, 495 (1966); *cf.* 24 P.S. § 25-2599.2(b)(3) (granting funds for “[e]stablishing, maintaining, or expanding a class size reduction program”). To “reduce racial disparities in academic achievement, any reform effort should include . . . parental involvement in the schools, and smaller class size.” *Pa. Human Relations Comm'n v. Sch. Dist. of Philadelphia*, 651 A.2d 186, 187 (Pa. Cmwlth. 1994). “School District[s] shall not prevent individual schools from altering the class size goals based upon appropriate and necessary deployment of instructional resources and needs of the students for individual attention and training.” *Id.* at 190. Indeed, traditional public schools, as

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<sup>11</sup> Available at <http://pacharters.org/resource-center/why-charters/> (last visited July 13, 2015).



well as charter schools, must “consider[] options to maintain acceptable student-to-teacher ratios.” *Save Our School v. Colonial Sch. Dist.*, 628 A.2d 1210, 1212 (Pa. Cmwlth. 1993).<sup>12</sup>

Studies confirm what all these courts have said: cramped classrooms lead to poor performance. Disparities in student-teacher ratio is one of the most frequently cited differences between high-quality and poor-quality schools. See Brian P. Marron, *Promoting Racial Equality Through Equal Educational Opportunity: The Case for Progressive School Choice*, 2002 B.Y.U. Educ. & L.J. 53, 60-61 (2002). Research indicates that there is a strong correlation between the student/teacher ratio and a student’s earning potential. See Darius Lakdawalla, *The Economics of Teacher Quality*, 49 J.L. & Econ. 285, 315-16 (2006). Small class sizes allow for “more individualized attention,” and “gives teachers more time to observe children’s interests and develop lesson plans accordingly.” Erin E. Lawson, Comment, *Fulfilling the Promise of Education to South Carolina’s At-Risk Children: A New Preschool*

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<sup>12</sup> Courts across the country agree that “no other factor has been identified as more important to the quality of education than class size.” *State v. Campbell Cnty. Sch. Dist.*, 19 P.3d 518, 541 (Wyo. 2001). Smaller class sizes “in the earliest grades correlate with better test results during those years and afterwards.” *Campaign for Fiscal Equity, Inc. v. State*, 801 N.E.2d 326, 335 (N.Y. 2003). Students in some school districts “benefit . . . from much smaller class size[s].” *King v. State*, 818 N.W.2d 1, 6 n.3 (Iowa 2012) (emphasis added). Yet, in poor districts, the “[m]aximum class sizes allowed under the state accreditation standards are often exceeded at all levels in elementary, junior high, and senior high schools.” *Bismark Pub. Sch. Dist. No. 1 v. State*, 511 N.W.2d 247, 261 (N.D. 1994). This “adversely affects [a] student’s educational opportunities.” *Id.*

*Initiative in South Carolina*, 58 S.C. L. Rev. 1025, 1031 (2007). Consequently, “[t]here is no doubt that in order to obtain a meaningful educational opportunity, low-income and minority children need . . . lower class sizes.” Michael A. Rebell, *Poverty, “Meaningful” Educational Opportunity, and the Necessary Role of the Courts*, 85 N.C. L. Rev. 1467, 1487 (2007).

### CONCLUSION

A successful charter school should not be forced to choose between two commendable goals of maintaining academic excellence and expanding opportunity to Pennsylvania students. Nor will a charter school have to choose between these two goals, if this Court interprets the Charter School Law according to its plain meaning. The judgment of the Commonwealth Court should be affirmed.

DATED: July 17, 2015.

Respectfully submitted,

By           /s/ Mark E. Jakubik            
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## CERTIFICATIONS

This 17th day of July, 2015, I certify that:

***Electronic filing.*** The electronic version of this brief that is filed through the Court's PACFILE web portal is an accurate and complete representation of the paper version of this document that is being filed by *amicus*.

***Word count.*** This brief contains 4,069 words, as counted by the undersigned's Microsoft Word word processing software.

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