



PACIFIC LEGAL FOUNDATION

December 20, 2016

The Honorable Tani Gorre Cantil-Sakauye,
Chief Justice, and Associate Justices of the
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: *Anderson Union High School District v. Shasta Secondary Home School*,
4 Cal. App. 5th 262 (2016) (Third Appellate District, Case No. C078491)

To the Honorable Chief Justice and Associate Justices of the California Supreme Court:

Pacific Legal Foundation (PLF) files this letter brief as Amicus Curiae under Rule 8.500 of the California Rules of Court. PLF requests that this Court grant the petition for review filed by the Shasta Secondary Home School (SSHS) in this matter.

IDENTITY AND INTEREST OF AMICUS CURIAE

Pacific Legal Foundation (PLF) is a nonprofit, tax-exempt foundation litigating matters of public interest. Founded in 1973, PLF offers a voice in the courts for mainstream Americans who believe in limited government, individual freedom, private property rights, and free enterprise. PLF is headquartered in Sacramento, California, and has offices in Washington, D.C., Washington state, and Florida. PLF has participated in the United States Supreme Court in many cases involving K-12 education reform, including *Arizona Christian School Tuition Organization v. Winn*, 563 U.S. 125 (2011), *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002), and *Mitchell v. Helms*, 530 U.S. 793 (2000). PLF has also participated in this Court and other California courts in cases regarding education reform, such as *California Charter Schools Association v. Los Angeles Unified School District*, 60 Cal. 4th 1221 (2015), and *Wells v. One2One Learning Foundation*, 39 Cal. 4th 1164 (2006). PLF champions school choice across the country.¹

INTRODUCTION

This Court should grant review when needed “to settle an important question of law.”² SSHS’s petition meets this criterion. Vital nonclassroom-based charter schools across the state—

¹ See, e.g., *Armstrong v. Kadas*, No. CV-115-H-SEH (D. Mont. filed Dec. 28, 2015); *White v. Voluntary Interdistrict Choice Corp.*, No. 4:16-cv-00629-RLW (E.D. Mo. filed May 4, 2016); *Sch. Dist. of Philadelphia v. Discover Charter Sch.*, No. 16 EAP 2016 (Penn. 2016).

² Cal. R. Ct. 8.500(b)(1).

and their many students—will face uncertainty and handicaps without this Court’s guidance on an important question of statutory interpretation.

The decision below threatens the viability of innovative charter programs based outside the classroom. These programs are designed to reach underserved children most in need of them. Nonclassroom-based schools are often called blended learning—mixtures of online and on-site education. “Blended learning, through which students receive some instruction online and some in a brick and mortar building, provides rural schools with . . . valuable opportunities—flexible learning schedules, greater access to course content, and potential cost savings in transportation.”³

SSHS is a blended-learning school. It offers personalized educational support to students and parents tailored to the student’s specific needs. Like other blended-learning schools, SSHS depends on resource centers. Students can meet with teachers and tutors at these centers and avail themselves of numerous benefits, such as labs, meeting rooms, work spaces, books, and optional classes. For rural areas like Shasta County, these schools offer an excellent option for students who need specialized instruction or who do not fit into the traditional public school model.

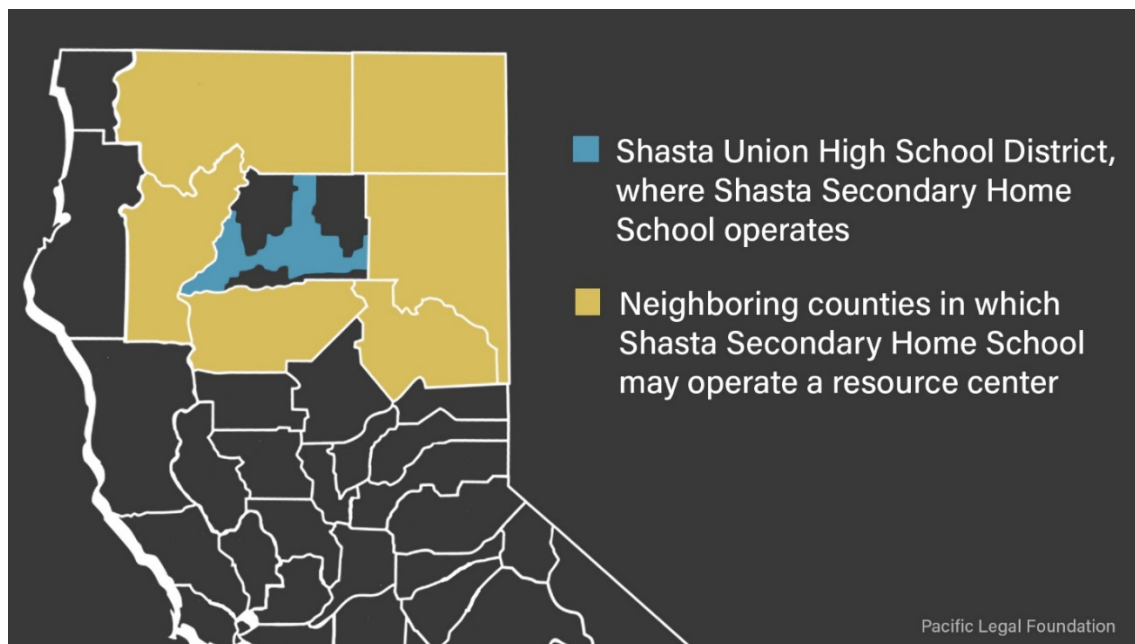
California’s charter school law says that nonclassroom-based charters may operate a resource center within the boundaries of the chartering authority and within any adjacent county.⁴ SSHS was authorized by the Shasta Union High School District and operated two resource centers within its boundaries. SSHS also opened a third resource center further south within Shasta County, but also within the boundaries of the Anderson Union High School District. Anderson sued, arguing that this third resource center violated the law because it was neither in an adjacent county nor within the boundaries of the Shasta Union High School District. The court of appeal agreed.

The court of appeal held that blended-learning charter schools may not operate a “resource center” in the county where the charter school is authorized unless it sits within the geographic boundaries of its authorizing school district.⁵ The holding means that SSHS could operate a resource center hundreds of miles away—say, in the far reaches of Modoc County—but prevents it from operating the same resource center a few miles down the road from the students it serves in Shasta County. The result is pictured in the map below:

³ Andy Smarick, *A New Frontier: Utilizing Charter Schooling To Strengthen Rural Education* 27 (2014).

⁴ Educ. Code § 47605.1(c).

⁵ *Anderson Union High School Dist. v. Shasta Secondary Home School*, 4 Cal. App. 5th 262, 276 (2016).



As this map shows, the court of appeal decision allows SSSH to operate a resource center within the blue area—the Shasta Union High School District. It can also operate a resource center anywhere in the neighboring counties of Siskiyou, Modoc, Lassen, Plumas, Tehama, or Trinity. But, says the court of appeal, it cannot operate such a center in its own Shasta County unless it stays within the blue area. This creates pockets of forbidden territory right where the resource centers could be of most value to students.

The inability to create accessible resource centers will make it impossible for many of these blended-learning schools to operate effectively. The pedagogical foundation of these schools rests on their ability to place resource centers at reasonable distances for their students. These centers also help blended-learning schools overcome one of distance learning’s major obstacles—face-to-face time with facilitators, teachers, and tutors.⁶

The court of appeal’s decision impacts the education of tens of thousands of California students. This Court should grant review to resolve this important question of law.

⁶ Gregg Vanourek, *A Primer on Virtual Charter Schools* 6 (Aug. 2006); see also Carolyn Chuong & Jennifer O’Neal Schiess, *The Promise of Personalized Learning in Rural America* 9 (2016) (“[W]ithout personal interaction with a teacher, online learning can feel deeply impersonal for students.”).

**REVIEW IS NEEDED TO SAFEGUARD THE VIABILITY
OF VALUABLE CHARTER SCHOOL PROGRAMS**

**A. Blended-Learning Charter Schools Play an Increasingly
Important Role in California’s Public School System**

California has a long and successful history with charter schools. In 1992, California became the second state in the nation to respond to the crisis in K-12 education by authorizing charter schools.⁷ These charter schools have been proven to fix inequities in school funding and teacher competence that lead to underperformance.⁸ The state’s goal is not to replace the public school system, but to provide a path for improving all public schools for all students.⁹

California has about 982 charter schools, more than any other state.¹⁰ Of California’s 58 counties, 50 contain charter schools, and there are 8 all-charter districts.¹¹ Charter schools have become a key component of California’s education system.

Charter schools improve educational outcomes for tens of thousands of California’s public school students. Research demonstrates that these schools improve student achievement, a trend that has grown with time.¹² High school students who attend charters graduate and attend college at greater rates than their peers at traditional public schools.¹³

Charter schools even improve the performance of traditional public schools. This was part of the Legislature’s intent in creating the charter school law—to spur the kind of

⁷ See Charter Schools Act of 1992, Educ. Code § 47600, *et seq.*

⁸ See Clint Bolick, *Solving the Education Crisis Through Parental Choice*, 11 Stan. L. & Pol’y Rev. 245, 249 (2000) (“Only through a system of choice and competition will public schools in the inner cities begin to improve.”).

⁹ See *California Charter Schools Ass’n*, 60 Cal. 4th at 1240 (“The Legislature authorized the creation of charter schools in order to promote choice, innovation, and competition on the premise that charter schools, while remaining accountable for student outcomes, would be largely free to adopt different educational approaches and make different decisions than those made by the school districts in which they operate.”).

¹⁰ *Charter Schools CalEdFacts*, Cal. Dep’t of Educ., <http://www.cde.ca.gov/sp/cs/re/cefcharterschools.asp>.

¹¹ *Id.*

¹² Sara Mead, et al., *The State of the Charter School Movement* 4, 29 (Sept. 2015); Patrick Baud, et al., *The Evolution of Charter School Quality*, 16 Research Briefs in Economic Policy 1-2 (Dec. 2014).

¹³ *Id.* at 23.

competition that inspires high quality education.¹⁴ Research has borne out that charter schools do inspire improvements in traditional public schools.¹⁵

Minorities and low-income students benefit most from charter schools. Recent data show that 29% of charter school populations are African-American, compared to 24% in traditional public schools.¹⁶ Latino students make up 27% of charter populations and only 15% in traditional public schools.¹⁷ Charter schools also enroll more students eligible for free and reduced lunch than traditional public schools.¹⁸ As a lifeline to these vulnerable groups, charter schools should remain an issue of continuing concern for this Court.

Because of charter school successes and general dissatisfaction with poor public school performance, experts predict that charter school attendance will expand dramatically. Projections indicate that charter schools' share of the public school student population will grow from 5.8% to 20-40% nationwide by 2035.¹⁹ Much of that growth will occur in California—the nation's leader in charter school growth. To accommodate this growing demand, California needs more charter schools, more facilities, more talented teachers and administrators, and fewer political obstacles.²⁰

Blended-learning charter schools that mix distance and face-to-face learning play a key role in meeting this increased demand. Such schools often require less infrastructure and fewer faculty members.²¹ The ability to mitigate or avoid the real estate costs associated with new school buildings can remove a major obstacle to meeting projected growth.²²

As demonstrated by the proliferation of blended-learning charter schools, charters also tend to lead in personalized learning and incorporating technology.²³ Due to lack of competition, traditional public schools are not likely to fill the innovation gap created if blended-learning charter schools leave the market because of legal or political barriers. On the other hand, traditional public schools are far more likely to offer nonclassroom options if spurred to compete with blended-learning charters rather than shut them out through political or legal barriers. Thus,

¹⁴ Educ. Code § 47601(g).

¹⁵ Greg Forster, *A Win-Win Solution: The Empirical Evidence on School Choice* 16-19 (May 2016).

¹⁶ Mead, *supra* note 12 at 19.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 60.

²⁰ *Id.* at 61.

²¹ *See* Chuong, *supra* note 6 at 33.

²² Mead, *supra* note 12 at 70.

²³ *See* Chuong, *supra* note 6 at 18.

this case raises an important issue for the future of charter school growth and public school innovation in California.

B. Blended-Learning Schools Offer Unique and Valuable Benefits That Address the Challenges Faced by Rural School Districts

The court of appeal’s ruling will destroy important educational opportunities for many children living in rural communities. For good reasons, education reformers have focused most of their attention on troubled inner-city schools.²⁴ But as a result, reformers and policymakers often ignore the serious plight faced by children in rural communities.²⁵ Blended-learning charters address many of these problems.

Children in rural communities face serious barriers to quality education. For one, they are more likely to live in poverty than their urban peers.²⁶ And they often face daunting school transportation problems.²⁷ Rural children on average spend more than an hour on the bus a day—often in hazardous conditions—and rural school districts spend twice what urban districts spend per pupil on transportation.²⁸ Rural students often lack access to learning technology, and rural schools have difficulty recruiting and keeping talented teachers.²⁹ Meanwhile, burgeoning school choice programs have often benefited urban families while leaving rural families with one substandard option.³⁰

The Legislature intended school districts to employ distance and blended learning so that each child has “equal access to educational opportunities, regardless of where he or she lives.”³¹ Charter schools offer innovations that can address rural issues.³² This is especially true of blended-learning schools like SSHS, which directly address problems facing rural communities. Transportation becomes less of a struggle because such schools can “leverage technology to provide virtual instruction to students, reducing the cost and time required for transportation by bringing instruction to a student’s home.”³³

Blended-learning charters can also draw from a larger pool of teaching talent. Rural schools often struggle to attract excellent teachers because of the lower pay and the fewer

²⁴ Smarick, *supra* note 3 at 1-2.

²⁵ *Id.*

²⁶ *Id.* at i.

²⁷ *Id.* at 25-26.

²⁸ *Id.* at 25.

²⁹ *Id.* at 18.

³⁰ *Id.* at 1-2.

³¹ Educ. Code § 51865.

³² See Smarick, *supra* note 3 at 2 (“We know that chartering can be a useful tool for rural families that want access to high quality schools.”).

³³ *Id.* at 25.

amenities of rural life.³⁴ SSHS and similar blended-learning schools offer a solution by “providing access to high-quality online teachers.”³⁵ Online programs grant rural communities access to “talent pools in nearby suburban and urban communities.”³⁶ This gives blended-learning programs “the benefit of hiring locally for classroom proctors and face-to-face interaction with adults in the local community, while leveraging online instruction with high quality virtual teachers.”³⁷

A school’s ability to combine the benefits of distance learning with face-to-face interaction is essential to overcoming many of the challenges associated with purely online learning.³⁸ If these schools must close down resource centers in areas near their students, the quality of students’ education will suffer. For that reason, the Legislature specifically encouraged the creation of such centers.³⁹

CONCLUSION

The lower court’s reasoning violates rules of statutory interpretation and generates absurd results that the Legislature could not have intended. Nothing in the charter school law says resource centers cannot be placed in the county of the charter school. Rather, the law only states that such centers *can* be built within the jurisdiction of the chartering authority and any adjacent county. These express grants of authority do not imply that a resource center *cannot* be built in the charter school’s home county.

The court of appeal’s decision to the contrary has bizarre consequences. SSHS, for example, could operate a resource center hundreds of miles away in an adjacent county, but it cannot operate one just a few miles away. On the other hand, a blending-learning school in Tehama County could build a resource center in parts of Shasta County where SSHS—based in Shasta County—cannot operate. Anderson Union High School District thus could still face the attendance, governance, and funding issues associated with charter school competition, but from another county’s charter school. This irrational result does not comport with the Legislature’s intent to promote choice and competition through charter schools. As this Court reiterated in another key charter school case, “we may reject a literal construction that is contrary to the legislative intent apparent in the statute or that would lead to absurd results.”⁴⁰

³⁴ *See id.* at 18.

³⁵ *Id.* at 27.

³⁶ *Id.* at 17.

³⁷ *Id.* at 18.

³⁸ *See Chuong, supra* note 6 at 9; Nat’l Educ. Policy Ctr., *Virtual Schools in the U.S. 2014: Politics, Performance, Policy, and Research Evidence* 43 (Mar. 2014) (NEPC).

³⁹ *See* Educ. Code § 47605.1.

⁴⁰ *California Charter Schools Ass’n*, 60 Cal. 4th at 1237.

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Charter schools have benefited hundreds of thousands of California students. The blended-learning schools at risk in this case offer to expand those benefits even further and with greater success. Their continuing vitality is a matter of tremendous importance. This Court should grant the petition for review.

Sincerely,

s/ JOSHUA P. THOMPSON

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ETHAN W. BLEVINS
Pacific Legal Foundation

Encl.

cc: California Court of Appeal, Third District
All counsel as shown on accompanying declaration of service