

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

No. G052409

ANAHEIM CITY SCHOOL DISTRICT, et al.,
Plaintiffs and Appellants,

v.

CECILIA OCHOA, et al.,
Defendants and Respondents.

On Appeal from the Superior Court of Orange County
(Case No. 30-2015-00782615, Honorable Andrew Banks, Judge)

**APPLICATION TO APPEAR AS AMICI CURIAE
AND BRIEF AMICUS CURIAE OF PACIFIC LEGAL
FOUNDATION AND PARENT REVOLUTION
IN SUPPORT OF DEFENDANTS AND RESPONDENTS**

JOSHUA P. THOMPSON, No. 250955
CALEB R. TROTTER, No. 305195
Pacific Legal Foundation
930 G Street
Sacramento, California 95814
Telephone: (916) 419-7111
Facsimile: (916) 419-7747
E-mail: jthompson@pacificlegal.org
E-mail: crt@pacificlegal.org

Attorneys for Amici Curiae
Pacific Legal Foundation
and Parent Revolution

TO BE FILED IN THE COURT OF APPEAL

State of California, Court of Appeal, Fourth Appellate District, Div. 3

Court of Appeal Case Number: **G052409**
Superior Court Case Number: **30-2015-00782615**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State bar number, and address):

**Caleb R. Trotter, No. 305195 Joshua P. Thompson, No. 250955
Pacific Legal Foundation, 930 G Street, Sacramento, CA 95814**

TELEPHONE NO.: **(916) 419-7111** FAX NO. (Optional): **(916) 419-7747**

E-MAIL ADDRESS (Optional): **crt@pacificlegal.org**

ATTORNEY FOR (Name): **Amici Curiae Pacific Legal Foundation, et al.**

APPELLANT/PETITIONER: **Anaheim City School District, et al.**

RESPONDENT/REAL PARTY IN INTEREST: **Cecilia Ochoa, 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.

1. This form is being submitted on behalf of the following party (name):

**Amici Curiae Pacific Legal Foundation
and Parent Revolution**

- 2.a. There are no interested entities or persons that must be listed in this certificate under rule 8.208.
- b. Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of Interest (Explain):
(1)	
(2)	
(3)	
(4)	

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: **March 4, 2016**

CALEB R. TROTTER

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

TABLE OF CONTENTS

	Page
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS	2
TABLE OF AUTHORITIES	5
APPLICATION OF PACIFIC LEGAL FOUNDATION AND PARENT REVOLUTION TO APPEAR AS AMICI CURIAE IN SUPPORT OF RESPONDENTS AND IN SUPPORT OF AFFIRMANCE	10
PACIFIC LEGAL FOUNDATION AND PARENT REVOLUTION’S BRIEF AMICUS CURIAE IN SUPPORT OF RESPONDENTS	12
INTRODUCTION AND SUMMARY OF ARGUMENT	12
ARGUMENT	16
I. THE PARENT EMPOWERMENT ACT HAS A BROAD PURPOSE AND APPLICATION	16
A. Legislative History Supports Liberal Interpretation of the Act	16
B. A Liberal Interpretation of the Act Promotes Key Public Policies	20
II. THE FEDERAL WAIVER CONTINUES PALM LANE’S 2013 STATUS	25
A. Federal Waivers Have No Effect on the Application of State Law	25
B. Existing Academic Reporting Statuses Are Retained in the Absence of New Criteria	28
III. PALM LANE CONTINUES TO FAIL ITS STUDENTS	31
CONCLUSION	33

	Page
CERTIFICATE OF COMPLIANCE	34
DECLARATION OF SERVICE BY MAIL	35

TABLE OF AUTHORITIES

Page

Cases

Ariz. Christian Sch. Tuition Org. v. Winn, 563 U.S. 125 (2011) 11

Cal. Charter Schs. Ass’n v. L.A. Unified Sch. Dist.,
60 Cal. 4th 1221 (2015) 11

Dyna-Med, Inc. v. Fair Employment & Hous. Comm’n,
43 Cal. 3d 1379 (1987) 17

Estate of McDill, 14 Cal. 3d 831 (1975) 19

In re Greg F., 55 Cal. 4th 393 (2012) 19

In re Israel O., 233 Cal. App. 4th 279 (2015) 30

Mitchell v. Helms, 530 U.S. 793 (2000) 11

People v. Davis, 68 Cal. 2d 481 (1968) 19

Quinn v. State, 15 Cal. 3d 162 (1975) 19

Rothschild v. Tyco Int’l (US), Inc., 83 Cal. App. 4th 488 (2000) 16

Today’s Fresh Start, Inc. v. L.A. Cnty. Office of Educ.,
57 Cal. 4th 197 (2013) 11

Wells v. One2One Learning Found., 39 Cal. 4th 1164 (2006) 11

Wilson v. State Bd. of Educ., 75 Cal. App. 4th 1125 (1999) 11

Zelman v. Simmons-Harris, 536 U.S. 639 (2002) 11

Federal Statute

20 U.S.C. § 6301 14

State Statutes

Cal. Educ. Code § 47600 12, 22

 § 47601 22

 § 47601(g) 12

 § 47605(1) 22

 § 48204 23

 § 53202 14

 § 53300 11, 14

Rules of Court

Cal. Ct. R. 8.200(c) 10

Cal. Ct. R. 8.200(c)(3) 10

Miscellaneous

Blume, Howard & Watanabe, Teresa, *L.A. Unified Schools Chief to Restore Parent Power to Overhaul Failing Schools*, L.A. Times, Nov. 11, 2014, <http://www.latimes.com/local/lanow/la-me-ln-parent-trigger--20141111-story.html> 26

Cal. Dep’t of Educ., *2012-13 Accountability Progress Reporting System: Summary of Results*, <http://www.cde.ca.gov/nr/ne/yr13/yr13rel78attb.asp#tab10> 24

Cal. Dep’t of Educ., *2015 Adequate Yearly Progress Report: Information Guide* (Dec. 2015), <http://www.cde.ca.gov/ta/ac/ay/documents/aypinfoguide15.pdf> 15, 28-29, 32

Cal. Dep’t of Educ., *2015 AYP Participation Rate*, <http://www.cde.ca.gov/ta/ac/ay/participationrate15.asp> 32

Cal. Dep't of Educ., *News Release #16-6: State Board of Education Votes to Seek Relief from Provisions of Outdated Federal No Child Left Behind Act* (Jan. 13, 2016), <http://www.cde.ca.gov/nr/ne/yr16/yr16rel6.asp> 24

Cal. Dep't of Educ., *Official Letter: Changes in Academic Accountability Reporting* (Apr. 2, 2014), <http://www.cde.ca.gov/ta/ac/ap/letter040214.asp> 28

Cal. Dep't of Educ., *Palm Lane Elementary 2012 Adequate Yearly Progress (AYP) Report*, http://ayp.cde.ca.gov/reports/Acnt2012/2012APR_SchAYPReport.aspx?allcds=30664236027379&df=2 31

Cal. Dep't of Educ., *Palm Lane Elementary 2012 AYP School Report*, http://ayp.cde.ca.gov/reports/Acnt2012/2012APR_SchAYPReport.aspx?allcds=30664236027379&df=2 32

Cal. Dep't of Educ., *Palm Lane Elementary 2013 Adequate Yearly Progress (AYP) Report*, http://ayp.cde.ca.gov/reports/Acnt2013/2013APR_SchAYPReport.aspx?allcds=30664236027379&df=2 31

Cal. Dep't of Educ., *Palm Lane Elementary 2013 AYP School Report*, http://ayp.cde.ca.gov/reports/Acnt2013/2013APR_SchAYPReport.aspx?allcds=30664236027379&df=2 32

Cal. Dep't of Educ., *Palm Lane Elementary 2015 AYP School Report*, http://ayp.cde.ca.gov/reports/Acnt2015/2015APR_SchAYPReport.aspx?allcds=30664236027379&df=2 32

Cal. Dep't of Educ., *Palm Lane Elementary School: School Accountability Report Card, Reported Using Data from the 2014-15 School Year*, <http://sarconline.org/SarcPdfs/7/30664236027379.pdf> 21

	Page
Cal. Legislative Counsel Bureau, <i>No Child Left Behind Act of 2001: Waiver: Los Angeles Unified School District #1425465</i> (Nov. 21, 2014), https://s3.amazonaws.com/s3.documentcloud.org/documents/1371721/lausd-parent-empowerment-act-lc-opinion-11-24-14.pdf	17-18, 26-27
CCSA, 2015-16 New California Charter Schools Fact Sheet (Oct. 30, 2015), http://www.ccsa.org/blog/2015/10/fact-sheet-new-schools-2015-16.html	13
Center for Research on Education Outcomes, <i>Charter School Performance in California</i> (2014), https://credo.stanford.edu/pdfs/ca_report_FINAL.pdf	13
Johnson, Judith & Medler, Alex, <i>The Conceptual and Practical Development of Charter Schools</i> , 11 Stan. L. & Pol’y Rev. 291 (2000)	22
Letter from Deborah Delisle, Assistant Secretary, U.S. Dep’t of Educ., to John Deasy, Superintendent, LAUSD (Nov. 22, 2013), https://www2.ed.gov/policy/eseaflex/implementation-letters/coreimplementsltrs11222013.pdf	25
Nat’l Alliance for Pub. Charter Schs., <i>A Growing Movement: America’s Largest Charter School Communities</i> (Dec. 2014), http://www.publiccharters.org/wp-content/uploads/2014/12/2014_Enrollment_Share_FINAL.pdf	23
Rhee, Michelle, <i>Communities Need Parent Trigger Laws</i> , U.S. News & World Report, Oct. 25, 2012, http://www.usnews.com/debate-club/is-there-a-need-for-parent-trigger-laws/fixing-our-failing-schools-is-a-civil-rights-issue	21
Romero, Gloria, <i>‘Parent Trigger’ Law Shot Down for Many Districts</i> , The Orange Cnty. Reg., Aug. 19, 2014	18
Ryan, James E. & Heise, Michael, <i>The Political Economy of School Choice</i> , 111 Yale L.J. 2043 (2002)	22

	Page
Students First, <i>Empowering Parents With Choice: The Parent Trigger</i> (2012), http://edref.3cdn.net/e8b76b494a3d0be419_0um6bpiop.pdf	20-21
Walk, R. David, Jr., <i>How Educational Management Companies Serve Charter Schools and Their Students</i> , 32 J.L. & Educ. 241 (2003)	22-23
Watanabe, Teresa, <i>LAUSD Says It's Not Subject to State's 'Parent Trigger' Law this Year</i> , L.A. Times, Aug. 14, 2014, http://www.latimes.com/local/education/la-me-parent-trigger-20140815-story.html	25-26
Witt, Anne, <i>Who Pulled the Trigger? The Accessibility and Value of Parent Trigger Legislation for Parents in Low Income Communities</i> , 21 Geo. J. on Poverty L. & Pol'y 163 (2013)	18

Pursuant to California Rule of Court 8.200(c), Pacific Legal Foundation and Parent Revolution respectfully submit this application to appear as Amici Curiae in support of Defendants and Respondents Cecilia Ochoa, *et al.*, and combined herein is the proposed brief amicus curiae.

**APPLICATION OF PACIFIC LEGAL FOUNDATION
AND PARENT REVOLUTION TO APPEAR AS
AMICI CURIAE IN SUPPORT OF RESPONDENTS
AND IN SUPPORT OF AFFIRMANCE**

Pursuant to California Rule of Court 8.200(c), Pacific Legal Foundation (PLF) and Parent Revolution request leave to file the attached brief amicus curiae in support of Defendants and Respondents Cecilia Ochoa, *et al.* PLF and Parent Revolution are familiar with the issues and scope of their presentation in this case. Amici believe the attached brief will aid the Court in its consideration of those issues.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, Florida, and Washington, D.C. Formed in 1973, PLF believes in and supports the principles of limited government and free enterprise, the right of individuals to own and make reasonable use of

¹ Pursuant to Rule 8.200(c)(3), Amici Curiae affirm 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.

their private property, and the protection of individual rights. PLF has participated as amicus curiae in many cases involving education reform including *Cal. Charter Schs. Ass'n v. L.A. Unified Sch. Dist.*, 60 Cal. 4th 1221 (2015); *Today's Fresh Start, Inc. v. L.A. Cnty. Office of Educ.*, 57 Cal. 4th 197 (2013); *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125 (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).

Parent Revolution is a dynamic and growing nonprofit organization whose mission is to transform public education by empowering parents to transform their children's failing schools through community organizing. Formed in 2009, Parent Revolution has garnered national attention for its groundbreaking work conceiving of, and advocating for, the passage and implementation of the Parent Empowerment Act. Cal. Educ. Code § 53300. This "Parent Trigger" law provides to parents—for the first time ever—real power to transform their child's failing school through community organizing. Parent Revolution has helped parents at nine Southern California schools successfully organize their communities using the Parent Trigger law, and are working with parents at different stages of the organizing process at over a dozen additional schools.

This case raises important issues of education law as well as policy considerations concerning the ability of parents to transform their children's

failing school using the Parent Empowerment Act. Amici have a longstanding interest in education law, and in ensuring that parents have choices in how their children are educated. Together, Amici believe that their combined public policy perspective and litigation expertise will provide a helpful viewpoint on the issues presented that will assist the Court in its adjudication.

PLF and Parent Revolution respectfully request this Court to approve this application to appear as Amici and to accept the attached brief amicus curiae.

**PACIFIC LEGAL FOUNDATION AND
PARENT REVOLUTION’S BRIEF AMICUS
CURIAE IN SUPPORT OF RESPONDENTS**

**INTRODUCTION AND
SUMMARY OF ARGUMENT**

Parents of modest means have historically had few options for educating their children. In recent decades, deterioration of the public school system resulted in parental dissatisfaction and led to the development of the “school choice” movement. This movement is based on one simple idea: the greater the variety of schools for parents and students to choose from, the better the educational outcomes.

To that end, the California Legislature enacted the Charter Schools Act in 1992. Cal. Educ. Code § 47600, *et seq.*; *see also* Cal. Educ. Code § 47601(g) (One purpose of the Charter Schools Act is to “[p]rovide vigorous competition within the public school system to stimulate continual

improvements in all public schools.”). The Charter Schools Act made California the second state in the nation to authorize public charter schools. After twenty-plus years, charter schools are now commonplace in California, and students attending charter schools are succeeding. Center for Research on Education Outcomes, *Charter School Performance in California 5-6* (2014).² As of last year, 1,230 charter schools in California educated over 581,100 students, and 158,000 additional students were on waiting lists. CCSA, *2015-16 New California Charter Schools Fact Sheet* (Oct. 30, 2015).³

Despite the resounding success of charter schools throughout California, charter schools continue to face strong resistance from the traditional education lobby. Traditional district schools and public teachers unions routinely oppose the creation of new charter schools because they must compete with charters for students—and the accompanying state and federal funds. Parents who live in districts without charter schools, and whose children attend traditional district schools that continually fail to improve, often feel trapped and powerless to compel change in time for their children to benefit.

Recognizing that school districts and teachers unions lack the incentives to embrace the charter school movement and its innovative solutions, California lawmakers enacted the Parent Empowerment Act in 2010 (Act).

² https://credo.stanford.edu/pdfs/ca_report_FINAL.pdf.

³ <http://www.ccsa.org/blog/2015/10/fact-sheet-new-schools-2015-16.html>.

Cal. Educ. Code § 53300, *et seq.* The Act covers schools that (1) are not “persistently lowest-achieving;” (2) are subject to federal corrective measures; (3) “continue to fail to make adequate yearly progress;” and (4) have an Academic Performance Index score of less than 800. *Id.* § 53300. If a school meets each of the four criteria, parents of students attending the school may petition the school to implement specific changes. *Id.* At least one-half of the parents of students attending the school must sign the petition for it to have legal effect. *Id.* Under the Act, parents can choose one of four options: (1) replace over half the school staff; (2) replace the principal and make other structural changes; (3) demand the school be closed and children sent elsewhere; or (4) take the school away from the district and convert it into a charter school. Cal. Educ. Code §§ 53202, 53300.

Only one relevant provision of the Act is debated here: whether Palm Lane “continues to fail to make adequate yearly progress,” or AYP, in 2014. AYP is a measure created by Title I, Part A of the federal Elementary and Secondary Education Act. Under that federal statute, states must implement statewide accountability systems based on state standards and objectives. 20 U.S.C. § 6301. Schools that fail to make AYP towards statewide student proficiency goals are subject to corrective measures—designated “Program Improvement”—and remain in Program Improvement until the school makes

AYP for two consecutive reporting cycles. *See* Cal. Dep’t of Educ., 2015 *Adequate Yearly Progress Report: Information Guide* 8, 62 (Dec. 2015).⁴

In March 2014, the United States Department of Education granted a one-year waiver to the California Department of Education from reporting AYP. Letter from Deborah S. Delisle to Michael W. Kirst, President, California State Board of Education, and Tom Torlakson, California Superintendent of Public Instruction (Mar. 7, 2014). This waiver was strictly limited to application of federal law for the 2013-2014 school year, and did not waive any state law requirements. *See id.*

In this case, the Anaheim City School District seeks to deny parents of children attending Palm Lane Elementary School the ability to employ the Parent Empowerment Act. Parents of Palm Lane students are seeking a new future for their children by petitioning for conversion of failing Palm Lane into a charter school. Appellees’ Br. at 13-16. The school district has fought the parents’ attempt to exercise their rights under the Parent Empowerment Act. In particular, the school district claims that the California Department of Education suspended the Parent Empowerment Act *sub silentio*, when it obtained a one-year waiver on academic progress reporting requirements mandated by the federal “No Child Left Behind Act.” Appellants’ Open. Br. at 29; Appellants’ Reply Br. at 17. Because the failing school was exempted from reporting its failing status for one year, the school district argues that

⁴ [Http://www.cde.ca.gov/ta/ac/ay/documents/aypinfoguide15.pdf](http://www.cde.ca.gov/ta/ac/ay/documents/aypinfoguide15.pdf).

parents cannot prove the requisite triggers necessary to convert Palm Lane into a charter school.

The school district's argument is belied by the Parent Empowerment Act's text and purpose, ignores legislative intent, conflicts with Department of Education interpretations, and stifles the legislative policy decision to encourage increased parental choice. Under the school district's argument, not only are parents and students of Palm Lane denied the benefits of the Parent Empowerment Act for the 2013-2014 school year, but, by implication, so are parents and students at over one thousand other California schools.

This Court should uphold the adopted legislative policy that embraces empowering parents and increasing school choice, and ensure the Parent Empowerment Act is enforced and cannot be avoided by application of unrelated waivers from federal law. The decision below should be affirmed.

ARGUMENT

I

THE PARENT EMPOWERMENT ACT HAS A BROAD PURPOSE AND APPLICATION

A. Legislative History Supports Liberal Interpretation of the Act

When determining whether the Parent Empowerment Act should apply to chronically failing schools that were exempted from reporting AYP for one year, courts begin by looking at the intent of the Act. *See Rothschild v. Tyco Int'l (US), Inc.*, 83 Cal. App. 4th 488, 496 (2000). Because the Act does not

directly speak to schools that receive a temporary waiver from AYP reporting, and because the Act's text is ambiguous on this point, this Court should look to legislative intent to determine the impact of the federal waiver on the Act. To that end, statutes must be construed in context, considering the purpose of the law, and in harmony with other related provisions where possible. *See Dyna-Med, Inc. v. Fair Employment & Hous. Comm'n*, 43 Cal. 3d 1379, 1387 (1987) (“Both the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent.”).

As a part of the American Recovery and Reinvestment Act of 2009, Congress authorized payment of grants, known as the “Race to the Top,” to incentivize states to adopt successful educational policies. *See* Cal. Legislative Counsel Bureau, *No Child Left Behind Act of 2001: Waiver: Los Angeles Unified School District #1425465 2* (Nov. 21, 2014).⁵ In order to obtain a Race to the Top grant, California enacted several education reform laws, including the Parent Empowerment Act. *Id.*

The Act received broad, bipartisan support in the Legislature since it was part of a plan for “turning around low-performing schools.” Senate Third Reading Analysis of Senate Bill No. 4 (2009-10 5th Ex. Session). After passing through the Assembly, Governor Schwarzenegger signed the Act into

⁵ <https://s3.amazonaws.com/s3.documentcloud.org/documents/1371721/laus-d-parent-empowerment-act-lc-opinion-11-24-14.pdf>.

law, announcing the “historic and sweeping” law as demonstrative of California’s readiness to “chang[e] the culture at the local level to allow parents a greater role in their children’s education.” Arnold Schwarzenegger, Signing Statement, S. Journal, 5th Extraordinary Sess., at 46-47 (Cal. Jan. 12, 2010). The Act provides parents with authority to introduce swift and bold reforms in their children’s chronically failing schools. Anne Witt, *Who Pulled the Trigger? The Accessibility and Value of Parent Trigger Legislation for Parents in Low Income Communities*, 21 Geo. J. on Poverty L. & Pol’y 163, 164 (2013). Seeking to codify into law the “belief that parents should be the architects of their children’s educational futures, and that kids should not be left to languish in failing schools,” Senator Gloria Romero authored the Act. Gloria Romero, *‘Parent Trigger’ Law Shot Down for Many Districts*, The Orange Cnty. Reg., Aug. 19, 2014. Built on the framework of choice and democracy, the Act empowers parents, holds schools directly accountable to their students, and offers flexibility to localities in education.

The Act expands upon the Race to the Top requirements that mandate specific interventions for persistently lowest-achieving schools, and allows parents to petition for interventions in schools that are not persistently lowest-achieving. Legislative Counsel Bureau, *Waiver: Los Angeles Unified School District #1425465* at 3. The Act’s expansive approach to education reform shows it “was not enacted to implement federal law, nor does [it] rely on federal law being implemented in order to operate.” *Id.* at 6. The language of

the Act is broadly worded and should be interpreted in a manner that preserves legislative intent by allowing parents to intervene in their children's failing school. *See, e.g., People v. Davis*, 68 Cal. 2d 481, 483 (1968) ("The familiar rules are that statutes are to be given a reasonable and common sense construction which will render them valid and operative rather than defeat them.").

In spite of overwhelming evidence that California lawmakers sought to empower parents to take greater control of their children's education, the school district now argues that legislative *inaction* evidences the Legislature's intent to waive the Act for 2014. Appellants' Reply Br. at 15-16. Essentially, the school district argues that the Legislature's failure to amend the AYP provisions of the Parent Empowerment Act evidences its intent to suspend the ability of parents to seek redress under the Act for a year. Appellants' Open. Br. at 30-32; Appellants' Reply Br. at 16. But drawing conclusions from the Legislature's failure to enact legislation or make amendments is "a slim reed upon which to lean." *Quinn v. State*, 15 Cal. 3d 162, 175 (1975). The failure of the Legislature to change the law in a particular respect when the subject is generally before it and changes in other respects are made is indicative of an intent to leave the law as it stands in the aspects not amended.'" *In re Greg F.*, 55 Cal. 4th 393, 407 (2012) (quoting *Estate of McDill*, 14 Cal. 3d 831, 837-38 (1975)).

Because the Legislature enacted the Act to create more power for parents to hold their children's school accountable, and broadly worded the AYP provision, this Court should construe the Act to apply to Palm Lane for 2014. Any interpretation of the Act that renders the Act toothless and prevents parents from employing the Act should be rejected.

B. A Liberal Interpretation of the Act Promotes Key Public Policies

The Parent Empowerment Act is innovative and transformational for four major reasons. First, the Act provides parents with more authority and more choice when it comes to the education of their children. Rather than being without options while their children are trapped in low performing schools, parents have the opportunity to engage directly in overhauling their children's schools by working with other parents to sign a petition and force a change. Students First, *Empowering Parents With Choice: The Parent Trigger 2* (2012).⁶

Second, the Act forces low-performing schools to be held accountable to the needs of the families they serve. Historically, parents have not been provided with many opportunities for input in their children's education beyond attending parent-teacher meetings. *Id.* If their children's school is failing year after year, parents typically have very few—if any—tools to

⁶ [Http://edref.3cdn.net/e8b76b494a3d0be419_0um6bpiop.pdf](http://edref.3cdn.net/e8b76b494a3d0be419_0um6bpiop.pdf).

change it. The Act allows parents to mobilize together to hold schools accountable for student performance.

Third, the Act gives families leverage by increasing pressure upon districts in charge of failing schools. *Id.* Parents of children trapped in schools that are consistently the worst performing can utilize the Act to influence decisions being made by the school’s governing body. The Act provides an opportunity for schools and parents to collaborate and improve California’s education system. In cases where the district or school board is not willing to collaborate, parents can use the Parent Trigger to bring unyielding governing bodies to the table to discuss reform options that can improve schools, rather than just waiting and hoping for change.

Fourth, enforcement of the Act promotes civil rights. Michelle Rhee, *Communities Need Parent Trigger Laws*, U.S. News & World Report, Oct. 25, 2012.⁷ Typically, chronically failing schools are found in poor and minority communities. These schools, if left unchanged, perpetuate achievement gaps between minority students and their wealthier, nonminority peers. *Id.* This case is a perfect illustration.⁸ Allowing Palm Lane parents to employ the Act

⁷ [Http://www.usnews.com/debate-club/is-there-a-need-for-parent-trigger-laws/fixing-our-failing-schools-is-a-civil-rights-issue](http://www.usnews.com/debate-club/is-there-a-need-for-parent-trigger-laws/fixing-our-failing-schools-is-a-civil-rights-issue).

⁸ Data from the 2014-2015 school year shows enrollment at Palm Lane was 83.8% Hispanic or Latino, 89% “socioeconomically disadvantaged,” and 63.1% English learners. Cal. Dep’t of Educ., *Palm Lane Elementary School: School Accountability Report Card, Reported Using Data from the 2014-15 School Year 3*, <http://sarconline.org/SarcPdfs/7/30664236027379.pdf>.

ensures that Palm Lane students receive the intended benefits of the Act, and provides much needed accountability to Palm Lane and the school district.

Subjecting Palm Lane to the Parent Empowerment Act furthers the public policy codified in California's Charter Schools Act of 1992. *See generally* Cal. Educ. Code § 47600, *et seq.* A charter school is a publicly funded, tuition-free, and nonsectarian school with greater flexibility and greater accountability. James E. Ryan & Michael Heise, *The Political Economy of School Choice*, 111 Yale L.J. 2043, 2073 (2002); Judith Johnson & Alex Medler, *The Conceptual and Practical Development of Charter Schools*, 11 Stan. L. & Pol'y Rev. 291, 291 (2000). It is the Act's purpose to provide parents and students with choice in education. Cal. Educ. Code § 47601. With those choices 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 (“The core idea behind charters is to grant greater flexibility to schools in exchange for greater accountability, which includes the threat of closure if a school fails to perform adequately.”).

While charter school teachers must obtain certain teaching credentials, charter school administrators are free to hire non-union teachers. Cal. Educ. Code § 47605(1). “Indeed, an underlying premise of the charter school movement is to use free market concepts to improve public education.” R. David Walk, Jr., *How Educational Management Companies Serve Charter*

Schools and Their Students, 32 J.L. & Educ. 241, 244 (2003). Such choice contrasts with the traditional framework whereby students are assigned to a particular school based on where they live. *See* Cal. Educ. Code § 48204.

In addition to the hundreds of thousands of students attending charter schools, and the tens of thousands of additional students on waiting lists, twenty-four California school districts have over ten percent of their public school students attending charter schools. Nat'l Alliance for Pub. Charter Schs., *A Growing Movement: America's Largest Charter School Communities* 7-9 (Dec. 2014).⁹ As this, and the actions of Palm Lane parents, shows, California parents and students are clamoring for greater choices in public education. Fortunately, California lawmakers recognized the need for more choice years ago and opened California to the charter school movement. When combined with the Parent Empowerment Act, the express policy of state lawmakers favors increased school choice. Finding Palm Lane to be subject to the Act for the 2013-2014 school year furthers California education policy.

Furthermore, if the school district is correct that the Act is effectively nullified for 2014 because no AYP determination was made, then parents of children at up to ninety-two percent of elementary schools, and up to ninety-

⁹ [Http://www.publiccharters.org/wp-content/uploads/2014/12/2014_Enrollment_Share_FINAL.pdf](http://www.publiccharters.org/wp-content/uploads/2014/12/2014_Enrollment_Share_FINAL.pdf).

six percent of middle schools, are denied the protections of the Act.¹⁰ Cal. Dep't of Educ., *2012-13 Accountability Progress Reporting System: Summary of Results*.¹¹ Despite the high and growing demand for increased school choice, that is the result that the school district requests this Court to reach.

This issue is likely to recur. The ability to make AYP due to administrative changes to the federal criteria for measuring AYP is not uncommon. The California Department of Education has already voted to seek another one-year waiver from the United States Department of Education to allow it to similarly relax AYP standards for 2016. Cal. Dep't of Educ., *News Release #16-6: State Board of Education Votes to Seek Relief from Provisions of Outdated Federal No Child Left Behind Act* (Jan. 13, 2016).¹² If this trend continues, and if the Court should find Palm Lane to not be subject to the Act for 2014 because of the federal waiver, then the Act's protections can be easily circumvented. The Court should reject such a sweeping interpretation.

¹⁰ Because only eight percent of elementary schools and only four percent of middle schools receiving Title I funds made AYP in 2013, assuming all other criteria is met under the Act, the school district's argument would leave the vast majority of schools exempt from the Act for 2014. Comparing the 2013 results with the 2012 AYP reports (20% of elementary schools made AYP, and 15% of middle schools made AYP), the significant drop likely results in a substantial number of additional schools not subject to the Act if the school district prevails.

¹¹ [Http://cde.ca.gov/nr/ne/yr13/yr13rel78attb.asp#tab10](http://cde.ca.gov/nr/ne/yr13/yr13rel78attb.asp#tab10).

¹² [Http://www.cde.ca.gov/nr/ne/yr16/yr16rel6.asp](http://www.cde.ca.gov/nr/ne/yr16/yr16rel6.asp).

II

THE FEDERAL WAIVER CONTINUES PALM LANE'S 2013 STATUS

A. Federal Waivers Have No Effect on the Application of State Law

Palm Lane and the Anaheim school district are not the first to address the impact of federal waivers on state school accountability laws. A similar controversy occurred in 2014 after the Los Angeles Unified School District (LAUSD) and eight other California school districts applied for waivers from various aspects of the federal Elementary and Secondary Education Act. The requested waivers were granted on the condition that the school districts develop evaluation and support systems in accordance with United States Department of Education (United States) guidelines. Letter from Deborah Delisle, Assistant Secretary, U.S. Dep't of Educ., to John Deasy, Superintendent, LAUSD (Nov. 22, 2013).¹³ The United States' letter to LAUSD outlining the waiver grant specified that state law provisions still apply. *Id.*

LAUSD took the position that the federal waiver exempted it from the Parent Empowerment Act for the 2013-2014 school year. Teresa Watanabe, *LAUSD Says It's Not Subject to State's 'Parent Trigger' Law this Year*, L.A.

¹³ <https://www2.ed.gov/policy/eseaflex/implementation-letters/coreimplemen-11222013.pdf>.

Times, Aug. 14, 2014.¹⁴ This position “stunned” the author of the Act, former Senator Gloria Romero. According to Romero, LAUSD’s interpretation “violates the spirit and intent of parent empowerment.” *Id.* In an effort to get clarification on the federal waiver’s impact on the Act, and LAUSD’s interpretation, Senator Bob Huff requested the Legislative Counsel Bureau to provide guidance. *No Child Left Behind Act of 2001: Waiver: Los Angeles Unified School District #1425465* (Nov. 21, 2014).¹⁵

Three months after LAUSD’s position was made public, LAUSD, after a change in leadership, modified its position and declared it would again allow parents to petition under the Act. Howard Blume & Teresa Watanabe, *L.A. Unified Schools Chief to Restore Parent Power to Overhaul Failing Schools*, *L.A. Times*, Nov. 11, 2014.¹⁶ Ten days later, the Legislative Counsel Bureau issued its report anyway. The Legislative Counsel correctly, and emphatically, confirmed that the federal waiver had no effect on the Parent Empowerment Act during the 2013-2014 school year. Legislative Counsel Bureau, *Waiver: Los Angeles Unified School District #1425465*.¹⁷ The Legislative Counsel’s opinion was based on two primary reasons.

¹⁴ [Http://www.latimes.com/local/education/la-me-parent-trigger-20140815-story.html](http://www.latimes.com/local/education/la-me-parent-trigger-20140815-story.html).

¹⁵ *Supra* note 5.

¹⁶ [Http://www.latimes.com/local/lanow/la-me-ln-parent-trigger--20141111-story.html](http://www.latimes.com/local/lanow/la-me-ln-parent-trigger--20141111-story.html).

¹⁷ *Supra* note 5.

First, examining the text of the waiver reveals that it was only intended to apply to federal law. *Id.* at 5. Specifically, when the United States granted the waiver to LAUSD, the implementing letter stated that “the requirements to determine whether schools have made [AYP] . . . have not been waived, and *any State laws or regulations, including those related to AYP or school improvement status, are not affected by the waivers granted to your district.*” (Emphasis added by Legislative Counsel Bureau). *Id.* at 6. The waiver on its own terms does not waive state school accountability laws.

Second, the Act’s corresponding regulations support a construction of the Act that the waiver only excuses compliance with federal corrective action requirements, while the remainder of the regulations still function to identify schools eligible for parent intervention. *Id.* at 7. Even without the waived federal component, LAUSD was not exempt from the Act because it could still be identified as meeting the state’s criteria for application of the Act.

Because LAUSD’s original construction of the Act “depart[ed] from the legislative intent underlying [the] statute,” the Legislative Counsel Bureau rejected LAUSD’s contention that the waiver of federal law additionally waives state law. *Id.* at 4-7. While LAUSD reversed course, the school district here makes the same unfounded argument as LAUSD’s original position, even though the argument conflicts with the California Department of Education’s interpretation, and was expressly rejected by the Legislative Counsel Bureau and the United States in its dealings with LAUSD.

B. Existing Academic Reporting Statuses Are Retained in the Absence of New Criteria

In a letter to all state school superintendents and charter school administrators, the California Department of Education (Department) outlined the changes to academic accountability reporting for 2014 as a result of the waiver from the United States Department of Education. Cal. Dep't of Educ., *Official Letter: Changes in Academic Accountability Reporting* (Apr. 2, 2014).¹⁸ Due to the federal waiver, a school's Program Improvement status does not change from 2013. *Id.* Because no AYP was reported for 2014, the United States and the Department agreed to freeze schools in their 2013 status. *Id.* Thus, the conclusion that Palm Lane is frozen in its 2013 AYP status mirrors both the Department's and the United States' interpretation of the impact of the waiver on a school's status.

The Department noted in its December 2015 Adequate Yearly Progress Report that "since a 2014 AYP Report is not available for elementary and middle schools . . . the two AYP reports used for [Program Improvement] determinations . . . will be 2013 and 2015." Cal. Dep't of Educ., *2015 Adequate Yearly Progress Report: Information Guide* 8 n.* (Dec. 2015). The absence of AYP reporting in 2014 does not result in an effective halt to a school's status as continuing to fail to make AYP. Rather, the Department considers a school's 2013 status to continue through 2014.

¹⁸ [Http://cde.ca.gov/ta/ac/ap/letter040214.asp](http://cde.ca.gov/ta/ac/ap/letter040214.asp).

The 2015 Report provides two additional reasons that support freezing Palm Lane in its 2013 AYP status. First, the Department notes that a school cannot exit Program Improvement unless it makes AYP for two annual reporting cycles. *Id.* at 62. And for “elementary and middle schools, the two AYP reports used for Program Improvement exit determinations will be 2013 and 2015.” *Id.* at n.**. Thus, if a school was in Program Improvement in 2013, the Department considers it to continue its status in Program Improvement through 2014 even though no 2014 reporting occurred.

Second, the Report notes that if a school fails to meet the AYP criteria in a subject area for one student group in one year, and in the next year fails to meet the AYP criteria in the same subject area, but for a different student group, then the school has still failed to make AYP for two reporting cycles. *Id.* at 59. For example, if a school fails to make AYP in mathematics for black students in year one, and in the next year fails to make AYP in mathematics for white students, the school has failed to make AYP for mathematics for two reporting cycles even if black students made AYP in mathematics in the second year. This shows that the Department considers a school to continue to fail to make AYP until the school affirmatively shows that it has met the full criteria for making AYP. Likewise, in this case, Palm Lane could not cease

failing to make AYP in 2014 because there was no report showing it had made AYP in 2014.¹⁹

These examples show the Department's common practice of using the most recently calculated school accountability status until new criteria are established. *See generally In re Israel O.*, 233 Cal. App. 4th 279, 289-90 (2015) (courts give weight to executive departments' common practices in construing and interpreting statutes they administer). Furthermore, the Department's interpretations show a commonsense, practical approach to the problem created by one-year waivers. Instead of causing state school accountability laws to cease functioning as intended, the Department freezes schools in their current status, and then, once changes have been made to reporting requirements or accountability measures, the status reporting begins again. As the above examples show, fears of schools being stuck in failing status due to extended waiver periods are unfounded. *See, e.g.*, Appellants' Reply Br. at 18-19. The real concern is that students would be trapped in failing schools if the Act is deprived of its full force.

¹⁹ The Department provides one additional example that is worth mentioning. Due to a legislative amendment to another academic accountability measure—the Academic Performance Index (API) system—some schools will not have an API calculated in 2013-2014 or 2014-2015. Instead, those schools will use their “most recent API calculation” for accountability measures.

III

PALM LANE CONTINUES TO FAIL ITS STUDENTS

No one disputes that Palm Lane failed to make AYP in nine of the ten years prior to the start of this case, including 2012 and 2013. Appellants' Open. Br. at 30 n.3; *see also* Cal. Dep't of Educ., *Palm Lane Elementary 2012 Adequate Yearly Progress (AYP) Report*,²⁰ (AYP not met); Cal. Dep't of Educ., *Palm Lane Elementary 2013 Adequate Yearly Progress (AYP) Report*,²¹ (AYP not met). Palm Lane did make AYP in 2015, *see* Appellants' Reply Br. at 10-12, but this is irrelevant to the question of whether Palm Lane continued to fail to make AYP in 2014 when parents invoked the Act and brought this lawsuit.²²

In any event, the noteworthiness of making AYP in 2015 is severely undercut by the changes made to AYP reporting for 2015 due to a separate one-year federal suspension of the proficiency requirement. Instead of measuring students' proficiency in mathematics and English-Language Arts, as was done for 2012 and 2013, the 2015 AYP reports only required schools

²⁰ [Http://ayp.cde.ca.gov/reports/Acnt2012/2012APRSchAYPReport.aspx?all cds=30664236027379&df=2](http://ayp.cde.ca.gov/reports/Acnt2012/2012APRSchAYPReport.aspx?all cds=30664236027379&df=2).

²¹ [Http://ayp.cde.ca.gov/reports/Acnt2013/2013APRSchAYPReport.aspx?all cds=30664236027379&df=2](http://ayp.cde.ca.gov/reports/Acnt2013/2013APRSchAYPReport.aspx?all cds=30664236027379&df=2).

²² Because Palm Lane failed to make AYP in 2012 and 2013, and did not affirmatively *make* AYP in 2014, this Court should reject the school district's strained argument that Palm Lane continues to fail to make AYP in 2014 solely because no reporting was completed.

to meet targets based on *attendance* rate and *participation* in standardized tests. See Cal. Dep't of Educ., *2015 Adequate Yearly Progress Report: Information Guide* 4-5 (Dec. 2015).²³ Moreover, for a school to satisfy the participation rate criteria, enrolled students need only log onto the testing platforms; they need not complete the tests. Cal. Dep't of Educ., *2015 AYP Participation Rate*.²⁴ When examining Palm Lane students' actual 2015 proficiency in mathematics and English-Language Arts, the results show significant drops from 2012 and 2013: 18.9% of students were proficient in English-Language Arts, and 12.5% were proficient in mathematics in 2015, compared to 45.7% in English and 56.7% in math for 2012, and 38% in English and 53.7% in math in 2013. Cal. Dep't of Educ., *Palm Lane Elementary 2015 AYP School Report*;²⁵ *2012 Report*;²⁶ *2013 Report*.²⁷ As a result, even though the school district applauds itself for Palm Lane meeting

²³ [Http://www.cde.ca.gov/ta/ac/ay/documents/aypinfoguide15.pdf](http://www.cde.ca.gov/ta/ac/ay/documents/aypinfoguide15.pdf).

²⁴ [Http://www.cde.ca.gov/ta/ac/ay/participationrate15.asp](http://www.cde.ca.gov/ta/ac/ay/participationrate15.asp).

²⁵ [Http://ayp.cde.ca.gov/reports/Acnt2015/2015APRSchAYPReport.aspx?allcde=30664236027379&df=2](http://ayp.cde.ca.gov/reports/Acnt2015/2015APRSchAYPReport.aspx?allcde=30664236027379&df=2).

²⁶ [Http://ayp.cde.ca.gov/reports/Acnt2012/2012APRSchAYPReport.aspx?allcde=30664236027379&df=2](http://ayp.cde.ca.gov/reports/Acnt2012/2012APRSchAYPReport.aspx?allcde=30664236027379&df=2).

²⁷ [Http://ayp.cde.ca.gov/reports/Acnt2013/2013APRSchAYPReport.aspx?allcde=30664236027379&df=2](http://ayp.cde.ca.gov/reports/Acnt2013/2013APRSchAYPReport.aspx?allcde=30664236027379&df=2).

AYP in 2015, Palm Lane has hardly demonstrated that it is making real academic progress.²⁸

CONCLUSION

The lack of a reported AYP for 2014 should not grant a reprieve to a failing school. Legislative intent, public policy, wording of federal waivers, and common practices all support the conclusion that Palm Lane's status was frozen in 2013. The Parent Empowerment Act was intended to give parents the ability to improve the educational options for students stuck in failing schools, and that is precisely what the parents here seek to achieve. The decision below should be affirmed.

DATED: March 4, 2016.

Respectfully submitted,

JOSHUA P. THOMPSON
CALEB R. TROTTER

By _____
CALEB R. TROTTER

Attorneys for Amici Curiae
Pacific Legal Foundation
and Parent Revolution

²⁸ It is important to note that the standardized testing changed in 2014. As a result, while the drops in proficiency are stunning, the differences in performance before and after 2014 do not provide a perfect comparison.

CERTIFICATE OF COMPLIANCE

Pursuant to California Rule of Court 8.204(c)(1), I hereby certify that the foregoing APPLICATION TO APPEAR AS AMICI CURIAE AND BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION AND PARENT REVOLUTION IN SUPPORT OF DEFENDANTS AND RESPONDENTS is proportionately spaced, has a typeface of 13 points or more, and contains 5,383 words.

DATED: March 4, 2016.

CALEB R. TROTTER

DECLARATION OF SERVICE BY MAIL

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 March 4, 2016, true copies of APPLICATION TO APPEAR AS AMICI CURIAE AND BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION AND PARENT REVOLUTION IN SUPPORT OF DEFENDANTS AND RESPONDENTS were placed in envelopes addressed to:

KIMBERLY A. SMITH
Fagen Friedman & Fulfrost LLP
6300 Wilshire Boulevard
Suite 1700
Los Angeles, CA 90048
Counsel for Plaintiffs and Appellants

MARK HOLSCHER
Kirkland & Ellis LLP
333 South Hope Street
Los Angeles, CA 90071

DANIEL AARON BRESS
Kirkland & Ellis LLP
655 15th Street NW
Washington, DC 20005-5793
Counsel for Defendants and Respondents

COURT CLERK
Orange County Superior Court
Central Justice Center
700 Civic Center Drive West
Santa Ana, CA 92701

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 March 4, 2016, a true copy of APPLICATION TO APPEAR AS AMICI CURIAE AND BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION AND PARENT REVOLUTION IN SUPPORT OF DEFENDANTS AND RESPONDENTS was sent electronically to:

COURT CLERK
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 4th day of March, 2016, at Sacramento, California.

BARBARA A. SIEBERT