

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
NO. 2018-CA-235

CHARLES AND EVELYN ARAUJO, PLAINTIFFS/APPELLANTS
CASSANDRA OVERTON-WELCHLIN,
JOHN AND KIMBERLY SEWELL,
LUTAYA STEWART,
AND ARTHUR BROWN, ALL ON BEHALF
OF THEMSELVES AS TAXPAYERS AND AS
NEXT FRIENDS OF THEIR MINOR CHILDREN

V.

GOVERNOR PHIL BRYANT,
THE MISSISSIPPI DEPARTMENT OF EDUCATION,
THE JACKSON PUBLIC SCHOOL DISTRICT,
THE MISSISSIPPI CHARTER SCHOOLS ASSOCIATION,
MIDTOWN PARTNERS, INC.,
MIDTOWN PUBLIC CHARTER SCHOOL,
GLADYS AND ANDREW OVERTON,
ELLA MAE JAMES, AND TIFFANY MINOR DEFENDANTS/APPELLEES

ON APPEAL FROM THE
CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI

BRIEF OF NATIONAL ALLIANCE FOR PUBLIC CHARTER SCHOOLS
AS *AMICUS CURIAE* IN SUPPORT OF APPELLEES

Kaytie M. Pickett, MSB No. 103202
JONES WALKER LLP
190 E. Capitol Street, Suite 800
Jackson, MS 39201-0427
(601) 949-4900

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INTEREST OF AMICUS CURIAE

Amicus Curiae National Alliance for Public Charter Schools (the “National Alliance”) is the leading national organization committed to advocating for public school students attending or hoping to attend a charter school. The National Alliance endeavors to increase the availability of high-quality public charter schools as options for families, especially those families without access to high-quality traditional public education. The National Alliance has deep experience with public charter schools, including state constitutional challenges to their enabling and funding legislation. Over the past two decades, the National Alliance has participated in the development of public charter schools in every state adopting a charter school law. The National Alliance has a substantial, legitimate interest in seeing the constitutionality of Miss. Code Ann. § 37-28-55(2) upheld.

As Appellants acknowledge, the statute’s constitutionality is before the Court—*not* whether public charter schools are beneficial to students or harmful to traditional district schools. *See* Appellants’ Br. at 1 (“This case is not about whether charter schools are good or bad”). Despite the parties’ focus on the constitutional issue at hand, the opposing *amici curiae* briefs present this case as a referendum on the merits of public charter schools and their effect on traditional district schools. Because Appellees’ brief does not address the *amici curiae* briefs submitted in support of Appellants, the National Alliance’s interests are not adequately protected by those already parties to the case. The National Alliance therefore offers the following matters of fact “that may otherwise escape the Court’s attention.” MISS. R. APP. P. 29(a).

SUMMARY OF THE ARGUMENT

The Attorney General's Appellees' brief well-explains the constitutional issues before the Court, and the National Alliance will not violate Mississippi Rule of Appellate Procedure 29 by repeating those arguments. Other *amici curiae*, however, appear to believe that if the Court is convinced that public charter schools are bad, then it will strike Miss. Code Ann. § 37-28-55(22) as unconstitutional.

The Court should not come away from the briefing in this case with only the one-sided, biased view of public charter schools presented by the other *amici curiae*. So that the Court can appreciate the practical importance of the issues before it, the National Alliance submits the following brief, supported by proven research demonstrating that public charter schools are an important educational innovation that can produce exceptional educational outcomes for otherwise-diserved children. The limited resources public charter schools obtain are not the cause of any harms to Plaintiffs or to traditional public schools, like those within Jackson Public Schools. Instead, they enable parents in otherwise failing districts to make choices about how best to educate their children.

ARGUMENT

I. Public charter schools offer meaningful choices to disadvantaged families.

When polled, most Mississippians lacked an understanding of what a charter school even is.¹ Charter schools are public schools: they are secular,² non-

¹ Rachel Canter, Angela Bass & Searcy Milam Morgan, *Mississippi Voices: Public Perception of Pre-K-12 Education in Mississippi*, MISS. FIRST (Mar. 2017), <http://liq0332x28t34od07uajkv11.wpengine.netdna-cdn.com/wp-content/uploads/2015/11/Mississippi-Voices.pdf>.

² Miss. Code Ann. § 37-28-39.

discriminatory,³ non-profit,⁴ and **free**.⁵ Before the authorization of public charter schools, parents with students in poor district schools had no choice but to send their children to those schools anyway and simply hope for the best. Public charter schools give those same parents and students what they lacked before: a choice in public education.

A. Public charter schools are growing nationwide because of their success.

Nationally, the choice for public charter schools is a popular one. No student is required to attend a public charter school, yet national enrollment numbers continue to grow. Over 3.2 million students attend over 7,000 public charter schools in 44 states, the District of Columbia, Guam, and Puerto Rico.⁶ National public opinion in 2017 jumped ten percentage points to 62% favoring public charter schools, with Black and Hispanic communities favoring charters at roughly the same level whites do.⁷ The majority of public charter school students are from minority and disadvantaged families.⁸

“Because they are schools of choice, [public charter schools] are held to the highest level of accountability — consumer demand.”⁹ Parents know what works for

³ Miss. Code Ann. §§ 37-28-23, 37-28-45.

⁴ Miss. Code Ann. § 37-28-39.

⁵ Miss. Code Ann. § 37-28-43.

⁶ Nat’l All. for Pub. Charter Schs., *National Charter School Facts*, <https://data.publiccharters.org/> (last visited Nov. 13, 2018).

⁷ Paul Peterson & Albert Cheng, *Executive Analysis: New Harvard Study Shows Public Support for Charter Schools Has Jumped 10 Points In Last Year* (Mar. 27, 2018), <https://www.the74million.org/article/harvard-poll-charter-support-10-points/>.

⁸ In 2015-2016, 59% of public charter school students were Black or Hispanic, and in 2014-2015, 55% were eligible for free or reduced public lunch. *See* Nat’l All. for Pub. Charter Schs., *National Charter School Facts*, <https://data.publiccharters.org/> (last visited Nov. 13, 2018); *see also* discussion *supra* at n. 6 and surrounding text.

⁹ *Closing the Achievement Gap*, PBS: Charter Sch. FAQ, <http://www.pbs.org/closingtheachievementgap/faq.html> (last visited Nov. 13, 2018).

their children, and the data supports their choice, particularly for disadvantaged families. The Mississippi Association of Educators’ characterization of public charter schools as producing “disappointing academic performance” is simply wrong.

In the 2017 U.S. News and World Report ranking of public high schools, the majority of the top 10 public high schools were public charter schools.¹⁰ The Center for Research on Education Outcomes (“CREDO”) 2013 study found that “[o]ver the course of a school year, charter school students learn more in reading than district public schools — it is as if the charter school students attended about seven more days of school in a typical school year.”¹¹ Those gains increased *significantly* the longer students attended public charter schools: “For students with four or more years in charter schools, their gains equated to an additional 43 days of learning in reading and 50 additional days of learning in math in each year.”¹² This increase is not because public charter schools somehow “weed out” poor or disadvantaged students: CREDO’s director stated, “[W]e found no differences in the demography of students served by charter schools over the period.”¹³

¹⁰ Howard Fuller & Nina Rees, *Proof Positive that Charter Schools are Better* (May 12, 2017), <https://www.newsweek.com/proof-positive-charter-schools-are-better-606146>.

¹¹ Margaret Raymond, *A Rebuttal of Weingarten on the Facts*, HUFFINGTON POST (Apr. 15, 2016), https://www.huffingtonpost.com/margaret-raymond/a-rebuttal-of-weingarten_b_9701622.html.

¹² *Id.*

¹³ *Id.*; see also Lauren Morando Rhim & Shaini Kothari, *Key Trends in Special Education in Charter Schools: A Secondary Analysis of the Civil Rights Data Collection*, N’tl. Ctr. for Spec. Educ. in Charter Schs. (Feb. 2018), https://static1.squarespace.com/static/52feb326e4b069fc72abb0c8/t/5aa6dbc5ec212d0feebc3375/1520884680228/280714+NCSECS+Full+Report_WEB.pdf (last visited Nov. 14, 2018) (“In 2013-14, 12 percent of district school students were students with disabilities compared with 11 percent of charter school students.”).

The gains for urban low income and minority students are even more dramatic: “as much as 44 extra days of learning in reading and 59 extra days in math.”¹⁴ CREDO summarized, “Our findings show urban charter schools in the aggregate provide significantly higher levels of annual growth in both math and reading compared to their [traditional public school] peers.”¹⁵ As the New York Times stated in 2015, “low-income, nonwhite students in urban areas . . . tend to do better if enrolled in charter schools instead of traditional public schools.”¹⁶ Public charter schools in urban areas like Chicago,¹⁷ Atlanta,¹⁸ and New York¹⁹ have realized huge achievement gains for their students. In Boston, for instance, “[t]he most recent estimates, which include about 95 percent of the city’s public charter school enrollment, found test score gains of about one-third of a standard deviation per year of attendance in math and 20 percent of a standard deviation for reading at the middle school level.”²⁰

¹⁴ Margaret Raymond, *A Rebuttal of Weingarten on the Facts*, HUFFINGTON POST (Apr. 15, 2016), https://www.huffingtonpost.com/margaret-raymond/a-rebuttal-of-weingarten_b_9701622.html; see also discussion *supra* at n. 11 and surrounding text.

¹⁵ Ctr. for Res. on Educ. Outcomes, *Urban Charter School Study Report on 41 Regions*, Stanford U. (2015), <https://credo.stanford.edu>.

¹⁶ Susan Dynarski, *Urban Charter Schools Often Succeed. Suburban Ones Often Don’t.*, N.Y. TIMES (Nov. 20, 2015), https://www.nytimes.com/2015/11/22/upshot/a-suburban-urban-divide-in-charter-school-success-rates.html?_r=0.

¹⁷ Kevin Mahnken, *New Report Shows Chicago’s Charter Schools Yield Higher Test Scores — and College Enrollment* (Nov. 27, 2017), <https://www.the74million.org/new-report-shows-chicagos-charter-schools-yield-higher-test-scores-and-college-enrollment/>.

¹⁸ Ellie Hensley, *Report: Atlanta charter schools produce better results with less funding*, ATL. BUS. CHRON. (Feb. 22, 2018), <https://www.bizjournals.com/atlanta/news/2018/02/22/report-atlanta-charter-schools-produce-better.html>.

¹⁹ Caroline Hoxby, Sonali Murarka & Jenny Kang, *How New York City’s Charter Schools Affect Achievement*, The N.Y.C. Charter Schs. Evaluation Project (Sept. 2009); Will Dobbie & Roland Fryer, *Getting Beneath the Veil of Effective Schools: Evidence from New York City*, 5 AM. ECON. J. 28-60 (2013).

²⁰ Sarah Cohodes, *Charter Schools and the Achievement Gap*, PRINCETON-BOOKINGS: THE FUTURE OF CHILD. (Winter 2018), https://futureofchildren.princeton.edu/sites/futureofchildren/files/resourcelinks/charter_schools_compiled.pdf.

Because of their ability to innovate, public charter schools have the potential for exceptional results. Success Academy is an incredible example. At this public charter school in New York, “[t]he overwhelmingly poor and minority students outscore schools in wealthy suburbs filled with parents who attended college.”²¹ Again, this is not because they have “weeded out” certain students: “[s]tudents with disabilities and English-language learners at Success Academy outperform those at traditional schools by even larger margins.”²² A reporter at *The Atlantic* wrote of Success Academy’s founder, Eva Moskowitz, that she “has created the most impressive education system I’ve ever seen.”²³

What is impressive is that public charter schools achieve these results using *less* resources. In February 2018, a non-partisan group of scholars at the University of Arkansas published a study of the productivity of public charter schools in eight cities. This study found that in all eight cities, public charter schools outperform traditional public schools in both math and reading cost-effectiveness.²⁴

Public charter schools demonstrate that the solution to educational reform is innovation, not simply throwing money at the problem. The freedom from bureaucracy is one of the key factors of their success. As *The Atlantic* reporter

²¹ Jonathan Chait, *Charters Didn’t Cause Segregation. They’re a Solution for Its Victims.*, INTELLIGENCER – N.Y. MAGAZINE (Dec. 8, 2017), <http://nymag.com/intelligencer/2017/12/charters-didnt-cause-segregation-they-help-its-victims.html?gtm=top>m=bottom>.

²² *Id.*

²³ Elizabeth Green, *The Charter-School Crusader: The combative Eva Moskowitz has created the nation’s most impressive school system—and made lots of enemies in the process.* (Jan./Feb. 2018), https://www.theatlantic.com/magazine/archive/2018/01/success-academy-charter-schools-eva-moskowitz/546554/?utm_source=atltw.

²⁴ Corey A. DeAngelis, Patrick J. Wolf, Larry D. Maloney & Jay F. May, *Bigger Bang, Fewer Bucks? The Productivity of Public Charter Schools in Eight U.S. Cities*, U. of Ark, Sch. Choice Demonstration Project of Educ. Reform (Feb. 2018), <http://www.uaedreform.org/downloads/2018/02/bigger-bang-fewer-bucks-the-productivity-of-public-charter-schools-in-eight-u-s-cities.pdf>.

Elizabeth Green explained, traditional public schools’ fault “lies in the (often competing) edicts issued by municipal, state, and federal authorities, which add up to chaos for the teachers who actually have to implement them.”²⁵ In contrast, public charter schools are free to experiment with “longer school days, multi-aged classrooms, strict discipline policies, lower student/teacher ratios, summer programs, and more individualized student attention by teachers, tutors, and assistants.”²⁶ And public charter schools are better able to replace ineffective teachers, a factor that enormously influences the quality of a child’s education.²⁷

B. Union criticisms of public charter schools are unfounded.

The most persistent critics of public charter schools have been unions like the Mississippi Association of Educators (“MAE”). This is because “[a]ll charters have the ability to remove ineffective teachers – a key tool that traditional public schools with rigid tenure protections lack . . .”²⁸ Thus, public charter school teachers are less likely to be represented by unions,²⁹ and public charter schools are not subject to

²⁵ Elizabeth Green, *The Charter-School Crusader: The combative Eva Moskowitz has created the nation’s most impressive school system—and made lots of enemies in the process.*, theatlantic.com (Jan./Feb. 2018), https://www.theatlantic.com/magazine/archive/2018/01/success-academy-charter-schools-eva-moskowitz/546554/?utm_source=atltw; see discussion *supra* at n. 23 and surrounding text.

²⁶ Katherine E. Lehn, *Charting the Course: Charter School Exploration In Virginia*, 50 U. RICH. L. REV. 839, 844-45 (2016) (internal quotations omitted).

²⁷ Jonathan Chait, *Charters Didn’t Cause Segregation. They’re a Solution for Its Victims.*, INTELLIGENCER – N.Y. MAGAZINE (Dec. 8, 2017), <http://nymag.com/intelligencer/2017/12/charters-didnt-cause-segregation-they-help-its-victims.html?gtm=top>m=bottom>; see discussion *supra* at nn. 21 and 22 and surrounding text.

²⁸ *Id.*

²⁹ Elizabeth Green, *The Charter-School Crusader: The combative Eva Moskowitz has created the nation’s most impressive school system—and made lots of enemies in the process.* (Jan./Feb. 2018), https://www.theatlantic.com/magazine/archive/2018/01/success-academy-charter-schools-eva-moskowitz/546554/?utm_source=atltw; see discussion *supra* at nn. 23-25 and surrounding text.

collective bargaining agreements.³⁰ Despite this narrow opposition, state courts have overwhelmingly rejected constitutional challenges to public charter schools. *See, e.g., El Centro de la Raza v. State*, No. 94269-2, 2018 Wash. LEXIS 713 (Oct. 25, 2018); *Iberville Parish Sch. Bd. v. La. State Bd. of Elem.*, 248 So. 3d 299 (La. March 13, 2018); *Boulder Valley Sch. Dist. RE-2 v. Colo. State Bd. of Educ.*, 217 P.3d 918, 921 (Colo. App. 2009); *Wilson v. State Bd. of Educ.*, 75 Cal. App. 4th 1125, 89 Cal. Rptr. 2d 745 (1999); *In re Grant of the Charter Sch. Application of Englewood on the Palisades Charter Sch.*, 727 A.2d 15 (N.J. App. Div. 1999), *aff'd as modified*, 753 A.2d 687 (N.J. 2000); *Council of Orgs. & Others for Educ. About Parochiaid, Inc. v. Governor*, 566 N.W.2d 208 (Mich. 1997).

Thus, MAE's criticism of public charter schools as "segregated" should be taken with a grain of salt. That criticism relies upon a discredited Associated Press analysis.³¹ It is misleading to compare the average racial makeup of public charter schools to the average racial makeup of traditional public schools, nationally, because so many public charter schools are in inner cities, serving poor, minority children. Yet "studies that compare them to nearby traditional public schools, serving the same neighborhoods, find them only slightly heavier in minority enrollment."³² Certainly, Mississippi's public charter schools cannot be called "segregated" any more so than

³⁰ Paul E. Peterson, *Post-Regulatory School Reform: With many students still at risk, choice and competition remain the country's best hope*, HARV. MAGAZINE (Sept.-Oct. 2016), <https://harvardmagazine.com/2016/09/post-regulatory-school-reform>.

³¹ "The AP's analysis relies on the previously discredited methodology of UCLA Professor Gary Orfield's 2012 study." Emily Langhorne, *The Truth About 'Segregated' Charter Schools: Don't fall for propaganda by anti-charter crusaders*, U.S. NEWS (Dec. 21, 2017), <https://www.usnews.com/opinion/knowledge-bank/articles/2017-12-21/5-facts-about-americas-segregated-charter-schools>.

³² *Id.*

Jackson Public Schools, where 95.99% of the students are Black, or Clarksdale Public Schools, where 96.07% are Black.³³ This is a result of residential segregation and private schools, not some inherent flaw in public charter schools.

MAE's criticism of public charter schools as rife with fraud is also misplaced. MAE makes no mention of Clarksdale Public Schools, which also submitted an *amicus* brief. Yet the Mississippi Department of Education brought charges against two Clarksdale teachers and a principal for a 2013 state testing cheating scandal.³⁴ "The cheating resulted in an astronomical increase in student test scores which resulted in the school rising from a F grade from the state to a B in 2013. A year later, the school earned an A rating, which helped raise the entire Clarksdale district's grade from F to D. But, the *Clarion-Ledger* reported, the reality was many of those same students could barely read or do basic math."³⁵

Clarksdale Public Schools is not alone. In 2016, Mississippi State Department of Education officials were fired for misusing Title I funds, a violation of federal law, which resulted in schools across Mississippi losing federal funding for after-school programs.³⁶ In 2014, the U.S. Department of Education prosecuted the former Superintendent of Greenville Public Schools, for conspiring to award \$1.4 million in

³³ Midtown Public Charter School is 97.14% Black; Reimagine Prep is 98.31% Black. See Miss. Dep't Educ., <https://newreports.mdek12.org/> (last visited Nov. 13, 2018).

³⁴ Bracey Harris, *Clarksdale principal barred from license for 20 years*, THE CLARION-LEDGER (Jan. 19, 2017), <https://www.clarionledger.com/story/news/2017/01/19/clarksdale-principal-given-20-year-license-ban/96774948/>.

³⁵ Warren Kulo, *Clarksdale principal becomes third accused in state test cheating scandal*, THE MISS. PRESS ASS'N (Dec. 16, 2015), http://blog.gulflive.com/mississippi-press-news/2015/12/clarksdale_principal_becomes_t.html.

³⁶ Kate Royals, *Schools prep for loss of after-school programs*, MISS. TODAY (Aug. 15, 2016), <https://mississippitoday.org/2016/08/15/schools-prep-for-loss-of-after-school-programs/>; see also Kate Royals, *Feds seek fraud probe of Education Dept. programs*, MISS. TODAY (Apr. 26, 2017), <https://mississippitoday.org/2017/04/26/feds-seek-fraud-probe-of-education-dept-programs/>.

district contracts in exchange for monetary kickbacks.³⁷ And in 2014, a ring of Mississippi and Tennessee teachers were indicted for using hired test-takes to obtain fraudulent test scores for teacher certification.³⁸

In short, MAE cites isolated instances of fraud in other states without addressing the fraud in its own backyard. There is no evidence that the nature of public charter schools, particularly non-profit ones like those in Mississippi, are more prone to fraud than the traditional public school education system.

II. Mississippi public charter schools are just getting started.

Although public charter schools have a long legislative history in Mississippi,³⁹ they have only recently gotten off the ground in this state. Statewide, only four public charter schools have been authorized for the 2018-2019 calendar year.⁴⁰ Given this, Mississippians' unfamiliarity with public charter schools is unsurprising.⁴¹ But “[w]hen given basic background information, respondents supported charter schools.

³⁷ Kathleen S. Tighe, U.S. Dep’t Educ. Off. Inspector Gen., *Semiannual Report to Congress No. 68* (May 2014), <https://www2.ed.gov/about/offices/list/oig/semiann/sar68.pdf>.

³⁸ R.L. Nave, *Testing Scandal Ensnares Mississippi Teachers*, JACKSON FREE PRESS (Nov. 26, 2012), <http://www.jacksonfreepress.com/news/2012/nov/26/testing-scandal-ensnares-mississippi-teachers/>.

³⁹ In 1997, the Governor signed HB 1672 into law, allowing existing public schools to qualify for charter status on a pilot program basis. Only one school in the state, an elementary school in Merigold, was converted to a charter school under this law, but it quickly reverted into a normal magnet school. The 1997 Mississippi charter school law expired in 2009.

In 2010, the *Conversion Charter Schools & New Schools Act* was passed. It stated that only failing public schools could be converted into charter schools. No charter schools were created in Mississippi with the passing of this legislation, and the conversion charter law was repealed in 2013.

In 2013, Representative Moore authored House Bill 369, which became the Conference Report passed by the House and Senate and signed into law by Governor Bryant as the Mississippi Charter School Act. *See* 2013 Miss. H.B. 369.

⁴⁰ Miss. Charter Sch. Authorizer Bd., *Authorized Charter Schools: 2018 - 2019 School Year*, <https://www.charterschoolboard.ms.gov/Pages/Authorized-Charter-Schools.aspx> (last visited Nov. 13, 2018).

⁴¹ Rachel Canter, Angela Bass & Searcy Milam Morgan, *Mississippi Voices: Public Perception of Pre-K-12 Education in Mississippi*, MISS. FIRST (Mar. 2017), <http://1iq0332x28t34od07uajkv11.wpengine.netdna-cdn.com/wp-content/uploads/2015/11/Mississippi-Voices.pdf>; *see discussion supra* at n. 1 and surrounding text.

55.3% of respondents support for having charter schools in Mississippi. 58.8% of respondents believe that charter schools would affect education positively in their community.”⁴²

The intervening charter school parents in this case (Gladys and Andrew Overton, Ella Mae James, and Tiffany Minor) certainly believe public charter schools have a positive impact. As they stated in their Motion to Intervene, “If the plaintiffs were to prevail, the result would be devastating to the Movants herein, resulting in the probable closure of charter schools, Movants’ children being taken from those improved educational environments where they are learning and growing significantly, and being thrown back into a system that is not meeting their needs or the needs of their fellow citizens in Jackson.” ROA.183.

Notably, none of the public charter school students taking the Mississippi Academic Assessment Program tests began their education in public charter schools. As the Mississippi State Superintendent of Education noted, “[I]t’s important to keep in mind that a lot of the students charters serve come to the schools below grade level, and change is not instantaneous.”⁴³ For instance, at Reimagine Prep, a 5th grade through 8th grade middle school, “[S]tudents came in at a 3rd grade reading level on average. Twenty percent were reading below 2nd grade level”⁴⁴ Despite these challenges, public charter schools continue to show improvement. For example, in the Mississippi Department of Education’s recently released 2018 accountability

⁴² *Id.*

⁴³ Kayleigh Skinner, *Fate of operator’s future charter schools depends on accountability results*, MISS. TODAY (Sept. 10, 2018), <https://mississippitoday.org/2018/09/10/fate-of-operators-future-charter-schools-depends-on-accountability-results/>.

⁴⁴ Kate Royals, *Charter schools struggle in first year of state tests*, MISS. TODAY (Aug. 26, 2016), <https://mississippitoday.org/2016/08/26/charter-schools-struggle-in-first-year-of-state-tests/>.

scores, Reimagine Prep improved from a “D” grade to a “C” grade—while Jackson Public Schools remain an “F.”⁴⁵ Ultimately, those public charter schools that do *not* show improvement stand to lose their charters. In other words, unlike traditional public schools, public charter schools that do not show results will simply be shut down.⁴⁶ Criticisms of a lack of accountability, therefore, do not hold.⁴⁷

III. Public charter schools are not the cause of JPS’s ills.

The National Alliance has *no* desire to see Jackson Public Schools, or any other traditional public schools in Mississippi, fail. The fact remains, however, that the existence of public charter schools within Jackson is important to parents and students who are justifiably frustrated with JPS’s struggles to offer consistently excellent education.

In the 2015-2016 and 2016-2017 school years, JPS as a district received an “F” rating.⁴⁸ During the pendency of this case, the Department of Education conducted an investigative audit, resulting in a finding that JPS violated 24 of 32 accreditation standards.⁴⁹ The Corrective Action Plan demonstrates, among other things, that JPS’s attendance records are inaccurate; its employment contracts are inconsistent;

⁴⁵ Miss. Dep’t Educ., *Accountability*, www.mdek12.org/OPR/Reporting/Accountability (last visited Nov. 13, 2018).

⁴⁶ Miss. Code Ann. § 37-28-33.

⁴⁷ The Mississippi Charter School Authorizer Board has been extremely selective in granting charters, denying applications of several schools this last year. See Kayleigh Skinner, *Fate of operator’s future charter schools depends on accountability results*, MISS. TODAY (Sept. 10, 2018), <https://mississippitoday.org/2018/09/10/fate-of-operators-future-charter-schools-depends-on-accountability-results/>; see discussion *supra* at n. 43 and surrounding text.

⁴⁸ Miss. Dep’t Educ., *Jackson School District Accountability Rating*, Miss. Accountability Sys., Ann. Report Card, http://newreports.mdek12.org/nclb_rc/2016/District/2520.pdf (last visited Nov. 13, 2018); Miss. Dep’t Educ., *Jackson School District Accountability Rating*, Miss. Accountability Sys., Ann. Report Card, http://newreports.mdek12.org/nclb_rc/2017/District/2520.pdf (last visited Nov. 13, 2018).

⁴⁹ *JPS 2018 Corrective Action Plan*, JACKSON FREE PRESS <http://www.jacksonfreepress.com/documents/2018/apr/14/jps-2018-corrective-action-plan/> (last visited Nov. 13, 2018).

and it failed to comply with District discipline policies, graduation requirements, the Individuals with Disabilities Act, and the Elementary and Secondary Education Act.⁵⁰ The state Board of Education recommended a state takeover⁵¹, but ultimately, in October 2017, Governor Bryant and Jackson Mayor Lumumba created an alternative collaborative plan.⁵² Despite this, JPS’s overall district rating for 2017-2018 remained an “F,” with eighteen elementary and middle schools within JPS receiving “F” scores.⁵³

Amicus Curiae Education Law Center casts these problems as a result of the transfer of district funds to public charter schools: “When combined with the chronic state underfunding of public school budgets – as is the case with the JPS budget –the additional loss of revenue to charter schools causes significant deficits in educational resources essential to improve outcomes for students in local districts such as JPS.” See ELC Amicus Br. at 2. If this were true, however, one would expect *all* of JPS schools to be struggling. **Yet JPS boasts some of the best public schools in the state.** Davis Magnet was the statewide overall top-scoring elementary school in 2017.⁵⁴ Power APAC, Key Elementary, Raines Elementary, Casey Elementary, Lake

⁵⁰ *Id.*; see also Kate Royals, *State: Jackson schools violate 22 or 32 education standards*, MISS. TODAY (June 24, 2016), <https://mississippitoday.org/2016/06/24/state-jackson-schools-violate-22-of-32-education-standards/>.

⁵¹ Bracey Harris, *Board asks Gov. to declare a state of emergency for JPS*, THE CLARION-LEDGER (Sept. 15, 2017), <https://www.clarionledger.com/story/news/2017/09/14/jps-takeover-moves-governor-opts/664965001/>.

⁵² Bracey Harris & Geoff Pender, *JPS takeover watch: Governor opts for a new way*, THE CLARION-LEDGER (Oct. 26, 2017), <https://www.clarionledger.com/story/news/2017/10/26/jps-takeover-governor-opts-new-way/802790001/>.

⁵³ Miss. Dep’t Educ., *Accountability*, www.mdek12.org/OPR/Reporting/Accountability (last visited Nov. 13, 2018); see discussion *supra* at n. 45 and surrounding text.

⁵⁴ Bracey Harris, *School grades released: As increase, Fs decrease ahead of new baseline*, THE CLARION-LEDGER (Oct. 19, 2017), <https://www.clarionledger.com/story/news/2017/10/19/school-grades-mississippi-release/767816001/>.

Elementary, Baker Elementary, Spann Elementary, and Bailey APAC all received “A” scores in the Mississippi Department of Education Accountability Report.⁵⁵ Clearly, any deficits in funding have not impacted these schools’ ability to improve student outcomes. These nine exceptional schools, and the other ten “B” and “C” graded schools within JPS, seriously call into question *amici curiae*’s claims that reduced funding is the cause of Jackson Public Schools’ ills.

Other districts better educate more students with *less* money. For instance, Desoto Public Schools enrolled 33,537 in 2016-2017.⁵⁶ JPS enrolled 26,948 in the same year. JPS’s budget *exceeded* Desoto County’s significantly: JPS had the largest budget in the state, at \$283,677,528.04, while Desoto County had a budget of \$279,705,446.73.⁵⁷ Yet Desoto Public Schools is an “A” rated district, while JPS is an “F.” The answer cannot be money alone. One key difference may be that 55% of the employees in DPS are teachers, while only 38% are in JPS.⁵⁸

Since 2012, JPS has seen funding *increases* from both state and local sources and a simultaneous decrease in student enrollment. ROA.648. The property taxes it collects have increased from \$78.7 million in 2007 to \$95.4 million in 2017, while the student population has fallen 16% over the same time period.⁵⁹ The annual property

⁵⁵ Miss. Dep’t Educ., *Accountability*, www.mdek12.org/OPR/Reporting/Accountability (last visited Nov. 13, 2018); see discussion *supra* at nn. 45, 53, and surrounding text.

⁵⁶ Miss. Dep’t Educ., *Enrollments by Grade and by Subgroup 2017-2018*, <https://newreports.mdek12.org/> (last visited Nov. 13, 2018).

⁵⁷ *2016-2017-Revenue-by-Source-by-District*, <https://www.mdek12.org/sites/default/files/Offices/MDE/SSE/2017-AnnRep/2016-2017-revenue-by-source-by-district.xlsx> (last visited Nov. 13, 2018).

⁵⁸ *JPS Gets More Property Taxes Than Ever*, JACKSON JAMBALAYA (Aug. 4, 2018), <http://kingfish1935.blogspot.com/2018/08/jps-gets-more-property-taxes-than-ever.html>.

⁵⁹ *Id.*

tax revenue per student has increased 44%.⁶⁰ At the same time, JPS’s educational scorecard has remained an “F.”

The record is devoid of *any* evidence that the money transferred to public charter schools—an estimated \$3 million⁶¹ out of \$279 million for 2017—has caused or will cause them any harm to Plaintiffs-Appellees. In fact, the record below shows that Jackson Public Schools, throughout this litigation, has asserted that it is “without sufficient information” to name *any* services that have been reduced or cut as a result to funding to public charter schools. ROA.822. Instead, JPS asks this Court to reverse the trial court’s finding that it is a necessary party to the litigation. If JPS cannot establish any harm it has suffered, neither can its students.⁶²

CONCLUSION

Though public charter schools are just beginning in Mississippi, they will provide an important educational benefit to Mississippi’s most disserved students. Public charter school parents value the opportunity to choose what is best for their children. Upholding Miss. Code Ann. § 37-28-55(22) keeps that ability to choose in place without any demonstrable harm to Plaintiffs or to traditional public schools.

⁶⁰ *Id.*

⁶¹ Arielle Dreher & Ko Bragg, *JPS: \$65 Million Bond ‘The Only Option’ for District After State Funding Cuts*, JACKSON FREE PRESS (June 12, 2018), <http://www.jacksonfreepress.com/news/2018/jun/12/jps-65-million-bond-only-option-jps-after-state-fu/>

⁶² One study found that “Exposure to charter schools significantly increased student performance at nearby traditional public schools. The effects increased with proximity to the closest charter school; students at traditional public schools co-located with charters experienced the greatest positive impacts.” See Jamie Davies O’Leary, *Charter schools have positive effects on traditional public schools located near them, at least in New York City*, Thomas Fordham Inst. (Aug. 18, 2017), <https://edexcellence.net/articles/charter-schools-have-positive-effects-on-traditional-public-schools-located-near-them-at>.

Respectfully submitted this 16th day of November, 2018.

NATIONAL ALLIANCE FOR PUBLIC
CHARTER SCHOOLS

By Its Attorneys,
JONES WALKER LLP

/s/ Kaytie M. Pickett
Kaytie M. Pickett

Kaytie M. Pickett, MSB No. 103202
Adam Stone, MSB No. 10412
JONES WALKER LLP
190 East Capitol Street, Suite 800 (39201)
P.O. Box 427
Jackson, MS 39205-0427
(601) 949-4900
astone@joneswalker.com
kpickett@joneswalker.com