

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

CHARLES AND EVELYN ARAUJO, *ET AL.*

Appellant

V.

CASE NO. 2018-CA-235

PHIL BRYANT, *ET AL.*

Appellee

On Appeal from the Chancery Court of Hinds County, Mississippi
First Judicial District

**Brief of the Mississippi Association of Educators as *Amicus Curiae*
In Support of Appellants**

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Statement of Interest

The Mississippi Association of Educators (“MAE”) is the oldest organization of education professionals in the State of Mississippi. MAE is composed of Mississippi elementary and secondary teachers, higher education faculty and staff, educational support professionals, retired educators, and college students preparing to become teachers. MAE educators are devoted to creating a public education system worthy of our students’ potential so that all Mississippi students can graduate from high school prepared to succeed in college or in their careers.

MAE supports public charter schools that are authorized and held accountable by local, democratically elected school boards, and are subject to effective oversight and reporting regarding their quality, finances and performance. MAE submits this brief to explain that the Mississippi Charter Schools Act of 2013, Miss. Code Ann. § 37-28-1 *et seq.* (West 2018), does not ensure that charter schools in Mississippi will meet these benchmarks. Instead, it risks creating a separate, unequal, and largely unaccountable system of schools that will undermine local public schools.

Argument

As the Appellants have amply demonstrated (Brief for Appellants at 12-20), this case is about the unconstitutional diversion of school district *ad valorem* taxes to fund charter schools, not about the merits of charter schools or the Legislature’s authority to enact a charter school law. However, Defendant-Intervenors Gladys Overton, *et al.*, in their arguments before the Chancery Court repeatedly sought to justify the illegal diversion of school district *ad valorem* taxes to charter schools based on the contentions that Mississippi children are “trapped in failing traditional public schools” and that charter schools are “educational sanctuaries” that will “emancipate” these children and “set them free on a path to achieving a brighter future.” (*See*,

e.g., Motion to Intervene, R. at 188; Brief on Cross-Motion for Summary Judgment, R. at 787.) This will occur, Intervenor claim, because “flexibility and regulatory freedom. . . make charter public schools more efficient and effective.” (R. at 792.) *Amicus* MAE believes these hyperbolic assertions about charter schools represent an attempt to color the Court’s view of the merits of this case, and ought not go unanswered.

In 1988 when the charter school movement was in its infancy, the Intervenor’s optimism may have been understandable. It rings false today. Study after study has found that on average charter schools perform no better than traditional public schools, despite the fact that some charters receive considerable private funding that public schools do not and may screen out students with special needs. At the same time, the “flexibility and regulatory freedom” afforded to charters has opened the door to waste, fraud, and other negative impacts such as racial and socioeconomic segregation. As a result, many organizations that initially championed the charter experiment have called for significant reforms.

There is no reason to think that Mississippi charter schools will defy the national trend. The Mississippi Charter Schools Act of 2013 (“Act”) contains many of the same flaws as similar laws in other states, and as such promises to duplicate in Mississippi the same dismal results obtained elsewhere. Indeed, student achievement data already available for existing charter schools in Mississippi point to precisely that result. Far from being “sanctuaries,” Mississippi charter schools will offer no meaningful benefit over traditional public school and may impose significant costs.

I. The Charter School Sector Has Largely Failed to Deliver on the Promise of Improving Education Through Innovation and Has Become a Haven for Fraud and Mismanagement

In 1988, American Federal of Teachers president Al Shanker gave a speech at the National Press Club calling for public school districts to be allowed to authorize groups of teachers to create and lead small, innovative schools within traditional public school districts.¹ The aim of such schools, in Shanker’s view, was to serve students who were not thriving in traditional classrooms while simultaneously allowing educators to test new school improvement strategies.² Shanker envisioned that the schools would feature faculty decision making, cooperative learning, and classrooms that reflected the diversity of the school district’s student population.³ Authorizing school districts would be permitted to waive education laws and regulations for the schools, but only so long as the teachers running the school could “show that they have some alternative way of taking care of the problem” each regulation was intended to address.⁴

A coalition of advocates in Minnesota cited Shanker’s idea in pressing for a law allowing “chartered schools” that would be “cooperatively managed” by teachers, administrators and parents, and that could improve education outcomes while also addressing the stubbornly-high levels of racial and socioeconomic segregation in the state.⁵ The Minnesota Legislature subsequently passed the nation’s first charter school law in 1991.⁶ However, while the initial version of the Minnesota law focused on creating “outcome-based” schools led by teachers, it

¹ Albert Shanker, President, Am. Fed’n of Teachers, National Press Club Speech (Mar. 31, 1988), <https://bit.ly/2vzi0YD>.

² *Id.*

³ *Id.*

⁴ *Id.* at 27.

⁵ Citizens League, *Chartered Schools = Choices for Educators + Quality for All Students* iii, 2 (Nov. 1988), <https://bit.ly/2B4j2AW>.

⁶ U.S. Dep’t. of Educ., *Evaluation of the Public Charter Schools Program: Year One Evaluation Report* i (2000), <https://bit.ly/2M4N7pc>.

granted the new schools broad exemptions from state education laws, without any provision for remedying the problems those laws addressed, and was soon modified to allow rapid charter school growth with little accountability.⁷ By 2008 the program had come under heavy criticism⁸ because it was having the opposite of the intended result: charters were underperforming district schools on assessments⁹ and were exacerbating racial and economic segregation in Minneapolis and St. Paul.¹⁰ The Minnesota Legislature responded by passing legislation that provided some additional oversight for charter schools,¹¹ but similar problems persist in the Minnesota charter sector to this day.¹²

Minnesota's experience is not unique. Forty-four states and the District of Columbia now have charter school laws,¹³ and there are nearly 7,000 charter schools in the United States claiming an enrollment of over 3 million students.¹⁴ While there are differences among state charter schools laws, they are more similar than they are different—and more similar to the

⁷ Compare 1991 Minn. Sess. Law Serv. Ch. 265, Article 9 with 1997 Minn. Sess. Law Serv. 1st Sp. Sess. Ch. 4, Article 5.

⁸ Minn. Legis. Reference Libr., *Minnesota Issues Resource Guides: Charter Schools*, <https://bit.ly/2AV8cNW>.

⁹ Minn. Off. of the Legis. Auditor, *Evaluation Report: Charter Schools* (June 2008), <https://bit.ly/2AYfn7Y>.

¹⁰ Margaret C. Hobday, et. al., *A Missed Opportunity: Minnesota's Failed Experiment with Choice-Based Integration*, 35 Wm. Mitchell L. Rev. 936 (2009); Inst. on Race & Poverty, *Failed Promises: Assessing Charter Schools in the Twin Cities* 1-2 (Nov. 2008), <https://bit.ly/2KGM0qd>.

¹¹ Minn. Legis. Reference Libr., *supra* note 8.

¹² Inst. for Metropolitan Opportunity, *The Minnesota School Choice Project, Part I: Segregation and Performance* (Feb. 2017), <https://bit.ly/2MgEMhp> (finding that charters “continue to underperform traditional public schools, after controlling for student demographics and other characteristics,” and finding that 45 of the most 50 racially isolated schools in the Twin Cities were charters.)

¹³ Educ. Comm'n of the States, *Charter Schools: Does the State Have a Charter School Law?* (Jan. 2018), <https://bit.ly/2Me4enT>.

¹⁴ Nat'l All. for Pub. Charter Schools, *Estimated Charter Public School Enrollment, 2016-17* 1 (2017), <https://bit.ly/2OVEBqq>.

Minnesota law than to the ideals of early charter school proponents.¹⁵ The result has been disappointing academic performance on the one hand and a raft of mismanagement and fraud on the other.

According to a 2006 study from the National Center for Education Statistics, charter school students performed slightly worse on national tests in both reading and math than their peers in traditional public schools.¹⁶ A 2009 study from Stanford University’s Center for Research on Education Outcomes (“CREDO”) also showed that charter schools marginally underperform traditional public schools, by about .01 standard deviations on state reading tests and .03 standard deviations in math.¹⁷ A 2013 follow-up study from CREDO found that charters marginally outperformed traditional public schools by .01 standard deviation in reading and scored about the same in math.¹⁸ As an analysis from the Brookings Institute explained, the differences between the two CREDO studies are “too small to be detectable to the naked eye.”¹⁹ A 2017 study from the Department Education further found that school improvement “restart” grants that converted low-performing traditional public schools to charters had no significant impacts on math or reading test scores, high school graduation rates, or college enrollment.²⁰

To be sure, there are individual charter schools that have shown encouraging academic results. But even in those cases it is often unclear whether the results can be fairly attributed to

¹⁵ Educ. Comm’n of the States, *50-State Comparison: Charter School Policies* <https://bit.ly/2HwtKU0> (comparing charter school laws across 27 different categories).

¹⁶ Nat’l Ctr. for Educ. Stat., *A Closer Look at Charter Schools Using Hierarchical Linear Modeling* iii-iv (Aug. 2016), <https://bit.ly/2vWvpJE>.

¹⁷ Ctr. for Res. on Educ. Outcomes, *Multiple Choice: Charter School Performance in 16 States* (2009), <https://stanford.io/1n1IvdD>.

¹⁸ Ctr. for Res. on Educ. Outcomes, *National Charter School Study* (2013), <https://stanford.io/1hN73lv>.

¹⁹ Tom Loveless, *Charter School Study: Much Ado About Tiny Differences*, Brookings Inst. (July 3, 2013), <https://brook.gs/2gPirGE>.

²⁰ Lisa Dragoset, *et al.*, *School Improvement Grants: Implementation and Effectiveness*, Nat’l Ctr. for Educ. Eval. and Reg’l Assistance 83 (Jan. 2017), <https://bit.ly/2kVwsD1>.

the school's programs and pedagogy, or are due simply to more money serving a carefully-selected group of students. For example, a 2011 study of the Knowledge is Power Program ("KIPP") charter schools found that due to additional revenue from federal and private contributions, KIPP schools received over 50% more revenue per pupil than the local public school districts in which they were located.²¹ And while KIPP was required to accept students via lottery when initially composing its classes it had an unusually high rate of attrition without replacement (averaging 15% overall, with 40% leaving between grades 6-8) resulting in underrepresentation of English language learners and students with disabilities in its classrooms as compared with traditional public schools.²²

Charter schools' tendency to weed out students with special needs—who require more resources and are therefore more costly to teach—is by no means unique to KIPP. At the “high-performing” Success Academy in New York, an investigation revealed that administrators had created a “Got to Go” list they used to single out challenging students and pressure them to withdraw from the school.²³

The SEED charter boarding school in Washington, D.C. was featured in the movie *Waiting for “Superman”* as a model of charter school success.²⁴ SEED students do have reading and math scores that are meaningfully higher than the city at large—but those scores have come at the cost of staggeringly-high attrition. Less than half of the school's first cohort of students remained at the school by the twelfth grade, in spite of the fact that per-pupil spending at SEED

²¹ Gary Miron, *et al.*, *What Makes KIPP Work? A Study of Student Characteristics, Attrition, and School Finance* ii (Mar. 2011), <https://bit.ly/2McRVII>.

²² *Id.* at iii.

²³ Kate Taylor, “At a Success Academy Charter School, Singling out Pupils Who Have ‘Got to Go,’” *N.Y. TIMES* A1 (Oct. 20, 2015), <https://nyti.ms/2mpsH9O>.

²⁴ Rebecca Underman, *et al.*, *Going Away to School: An Evaluation of SEED DC*, MRDC 2-3 (June 2016), <https://bit.ly/2MhIk44>.

is about \$40,000 per year²⁵—more than double the amount spent per student D.C. Public Schools.²⁶ And SEED students were also “no more likely to graduate in four years than students who lost the lottery and attended other schools” and no less likely to engage in risky behaviors.²⁷

Nor, as their proponents promised,²⁸ have charter schools had any positive impact on the education system as a whole. In Michigan—a state that has embraced charter schools in all of their forms—charter schools have done nothing to arrest the state’s slide from the middle of the pack in student achievement in the early 2000s to the very bottom today.²⁹ Instead, there is evidence that charters have “powerfully exacerbated the financial pressures of declining-enrollment districts” like Detroit.³⁰ A 2017 analysis from the Associated Press found that charters as a group “are among the nation’s most segregated” schools³¹—a finding that has been replicated in a growing number of states.³²

At the same time that charters have failed to deliver impressive academic benefits, they have also imposed significant costs, including, prominently, what a 2017 study has called an

²⁵ Vilsa E. Curto & Roland G. Fryer, *The Potential of Urban Boarding Schools for the Poor: Evidence from SEED*, 32 J. Lab. Econ. 65, 69 (Jan. 2014), <https://bit.ly/2MLcIQx>.

²⁶ *Id.* at ES-7.

²⁷ *Id.* at 43.

²⁸ Citizens League, *supra* note 5, at 1-4.

²⁹ Mark Binelli, “Michigan Gambled on Charter Schools. Its Children Lost,” N.Y. TIMES MM50 (Sept 5, 2017), <https://nyti.ms/2wFhs2Q>; Amber Arellano, et al., *Michigan’s Talent Crisis: The Economic Case for Rebuilding Michigan’s Broken Public Education System*, Educ. Tr. Midwest (2016) <https://bit.ly/2KQOXVt> (citing NAEP data).

³⁰ David Arsen, et al., *Which Districts Get Into Financial Trouble and Why: Michigan’s Story*, Educ. Pol’y Ctr. at Mich. State Univ. (Nov. 2015), <https://bit.ly/2AYkpkD>.

³¹ Ivan Moreno, “U.S. Charter School Put Growing Numbers in Racial Isolation,” ASSOC. PRESS (Dec. 3, 2017), <https://bit.ly/2kjmPTc>.

³² See *supra* notes 8-12; Erica Frankenberg, et al., *Choice Without Equity: Charter School Segregation*, 19(1) Educ. Pol’y Analysis Archives 1, 6-8 (2011), <https://bit.ly/2B0q0ao> (pointing to segregative effects in Connecticut, the District of Columbia, Illinois, Massachusetts, Michigan, Minnesota, New Jersey, North Carolina, and Texas).

“epidemic” of fraud in the sector.³³ The study found that the *known* impact of fraud reached \$223 million as of 2017—but that figure is based only on those instances in which charter malfeasance has been detected; given deficiencies in charter school oversight the report projected that the true losses may exceed \$2 billion per year.³⁴

Financial malfeasance by charter operators takes a number of forms, the most significant of which are outlined below.

- Outright embezzlement of public education funds for personal gain. Examples include:
 - The CEO of a Pennsylvania charter school was convicted and sentenced just last month for having embezzled \$8 million and spent those public education dollars on houses, a plane and other luxuries.³⁵
 - The CEO of a Minnesota charter school was convicted and sentenced for embezzling \$1.38 million from 2003 to 2008 and using those public education dollars on houses, cars, and trips to strip clubs.³⁶
 - The operators of another Minnesota charter school were convicted and sentenced for using public funds to finance a Caribbean cruise vacation, to pay off nearly \$20,000 in personal credit card debt, and to buy more than \$10,000 worth of tickets to sporting events.³⁷
- Charter school operators requesting and receiving public education funds for services that are never performed. Examples include:

³³ Ctr. for Popular Democracy, *Charter School Vulnerabilities to Waste, Fraud, and Abuse* 1 (May 2017), <https://bit.ly/2nrRgVD> (hereafter “CPD”).

³⁴ *Id.* at 1-2.

³⁵ Megan Guza, “Former PA Cyber CEO Nick Trombetta gets 20 months in prison for tax fraud,” *TRIBUNE-REVIEW* (July 24, 2018), <https://bit.ly/2w4k7Dq>.

³⁶ CPD, *supra* note 33, at 9.

³⁷ *Id.*

- Twenty-six Ohio charter schools received a total of \$4 million in federal grant funds despite never actually opening their doors;³⁸ no record shows the funds ever being returned.³⁹
- Operators of a Louisiana charter school falsified student diagnoses in order to receive \$320,000 in public funds designated for students with disabilities.⁴⁰
- A California charter school collected millions of taxpayer dollars for students who were actually attending private schools.⁴¹
- An online charter school in Ohio abruptly shut down this year after the state charged it had overbilled taxpayers by \$80 million, in many cases collecting funding for students who could not have attended the school because they did not own computers or have internet access.⁴²
- Charter schools falsely inflating enrollment figures in order to receive more funds than they are legally entitled to. Examples include:
 - An audit of a charter school in Minnesota revealed that the school owed \$608,000 to taxpayers because the charter’s operators overstated enrollment.⁴³

³⁸ Brian Kollars, “Report Blasts Charter School Oversight in Ohio,” DAYTON DAILY NEWS (May 26, 2016), <https://bit.ly/2OX0K7C>.

³⁹ *Id.*

⁴⁰ CPD, *supra* note 33, at 22.

⁴¹ *Id.* at 10.

⁴² James Pogue, “The GOP’s Biggest Charter School Experiment Just Imploded,” MOTHER JONES (Jan. 2018), <https://goo.gl/cYbUQx>.

⁴³ CPD, *supra* note 33, at 10.

- The chief executive of a Pennsylvania charter school was convicted and sentenced for defrauding the school district of \$206,554 by devising a scheme to inflate student enrollment.⁴⁴

Both the disappointing academic performance of charters and the litany of charter financial scandals have resulted in growing calls for change in the sector.

As the Annenberg Institute for School Reform has shown, performance and financial problems have proliferated because charter school laws generally fail to provide meaningful oversight and accountability.⁴⁵ Accordingly, Annenberg has recommend a number of reforms to address the problems plaguing the charter sector, including: (a) prohibiting practices that discourage enrollment of students with special needs or disproportionately pushing such students out of charter schools; (b) requiring that charter schools conduct independent audits and retain legal counsel; (c) establishing minimum qualifications for charter school treasurers; (d) amending charter laws to explicitly empower charter authorizers to oversee academic, financial, management, and legal aspects of individual schools and to swiftly and strongly respond to any failings; (e) empowering state education agencies to provide oversight of authorizers, including oversight of the monitoring process; and (f) making charter school financial documents available to the public.⁴⁶

Other organizations, including many champions of the charter movement, have likewise called for overhauling the charter sector. The performance of online charter schools in particular is so “disturbingly low” and “well-documented” that even charter school advocacy organizations

⁴⁴ *Id.*

⁴⁵ Annenberg Inst. for Sch. Reform, *Public Accountability for Charter Schools: Standards and Policy Recommendations for Effective Oversight* 3-12 (2014) <https://bit.ly/2w2xCn5>.

⁴⁶ *Id.* at 7-8, 12-13.

have called for stricter regulations and closure for “chronically low-performing” virtual schools.⁴⁷ In 2016, the NAACP called for a moratorium on new charter schools, pointing to segregation and other civil rights concerns, lack of oversight, and widespread fiscal mismanagement in the sector.⁴⁸ Others have warned that state and federal laws have incentivized charter school growth over quality or accountability, leading to a proliferation of charter schools that employ “predatory practices in order to boost enrollment” and disproportionately target vulnerable communities.⁴⁹

Unfortunately, while some states have tinkered with their charter statutes at the margins, there has been no significant move to adopt these recommended reforms of the charter sector. As we show in the next section, Mississippi is no exception.

II. The Charter Schools Act Is Not a Magic Bullet for Improving Education in Mississippi

As discussed above, while some individual charter schools make valuable contributions, the charter sector varies tremendously in terms of quality. That quality is influenced by a variety of factors, including the laws that govern charter schools’ formation and operation. Unfortunately, when it enacted the Charter Schools Act in 2013 the Legislature failed to heed the difficulties other states have faced in incentivizing accountable, high-quality charter schools that serve all students. It is not surprising, therefore, that early data on the performance of Mississippi charter schools mirror the sector’s lackluster national results—and directly contradict Intervenors’ claims.

⁴⁷ Nat’l All. for Pub. Charter Schools, *et al.*, *A Call to Action to Improve the Quality of Full-Time Virtual Charter Public Schools* 2, 13 (June 2016) <https://bit.ly/2w4U7rs>.

⁴⁸ Nat’l Ass’n for the Advancement of Colored People, *Resolution on a Moratorium on Charter Schools*, (Oct. 2016), <https://bit.ly/2MozZe6>.

⁴⁹ Preston C. Green III, *et. al.*, *Are We Heading Toward A Charter School “Bubble”? : Lessons from the Subprime Mortgage Crisis*, 50 U. Rich. L. Rev. 783, 801-03 (2016).

One of the Act’s most troubling flaws is that it allows charters to contract with online course providers for the delivery of “virtual courses.” Miss. Code Ann. § 37-28-43(6). The Act places no restrictions on the number or percentage of classroom activities schools may contract out to online providers; in theory they could provide 100% of their content online. Mississippi does not presently have any virtual charter schools or charters with a significant proportion of online courses, but the Act’s openness to this persistently low-quality underbelly of the charter sector does not signal a commitment to quality.

The Act also does not impose sufficient safeguards to prevent determined charter schools from screening out low-income and high-need students. Charters are barred from charging and from cherry-picking students at the admissions phase, but Act does not prohibit them from imposing fees, costs, or other requirements that may discourage needier families from attending. *Id.* § 37-28-43(4).⁵⁰ In addition, charters are only required to serve 80% of the proportion of all “underserved” students in their home district. *Id.* § 37-28-23. And charters will have little incentive to serve the highest-need students within the “underserved” group. *See* Code Miss. R. 10-402:2.2 (confirming that there are no distinctions within the “underserved” group).

One positive attribute of the Act is that it centralizes authorizing powers the Charter School Authorizer Board (“Board”), Miss. Code Ann. § 37-28-7(1), minimizing the risk that low-quality schools will “forum shop” to obtain a charter as they have in other states. But the Board’s independence and impartiality is jeopardized by the fact that the Board’s members are selected in part based on their “commitment to charter schooling,” *Id.* at § 37-28-7(4), and the Act expressly

⁵⁰ *See also* Annenberg, *supra* note 45 at 7 (describing how requirements imposed by charter schools—including parent volunteer hours, interviews, and required student essays—can screen out certain children).

permits the Board to accept “gifts, grants and donations of any kind from any public or private entity”—including, apparently, from entities with a stake in Board decisions. *Id.* § 37-28-11(2).

In addressing the Board’s powers and duties, the Act’s language is broad and aspirational to the point of vagueness, leaving it to the Board to determine which practices are “consistent with” national standards and what sort of “evidence” is necessary to approve schools based on “merit.” *Id.* §§ 37-28-9, 37-28-19. There are likewise relatively few specific requirements for the charter contract apart from setting performance expectations, *Id.* § 37-28-21(2), and the Act does not require a comprehensive impact statement. The Act permits the Board to engage in monitoring and oversight apart from required audits—but the precise activities, if any, are largely at the discretion of the Board and cannot “unduly inhibit the autonomy granted to charter schools.” *Id.* § 37-28-31(1). Finally, there are no mechanisms in the Act for reining in the Board if it decides to err on the side of rapid charter expansion while providing minimal oversight. All of these factors raise serious concerns that the Board’s charter school vetting and oversight processes will prove inadequate.

The first charter schools opened in Mississippi in 2015. There are thus limited data for assessing their performance and overall impact. However, the indicators that do exist suggest that Mississippi charter schools are performing no better overall—and likely somewhat worse—than the traditional public schools in their district.

The only charter schools in Mississippi for which state student achievement data currently exist are Midtown Public Charter School, ReImagine Prep, and Smilow Prep. All three schools are located in the Jackson Public School district (“JPS”). Because the schools do not have students enrolled at all grade levels, one of the only data points common to all three schools and JPS is student performance on the fifth grade Mississippi Academic Assessment Program’s

English and mathematics tests. And in both of the years for which data are available, the only school to actually exceed the performance of JPS on any of the fifth grade MAAP was ReImagine, whose students performed better than JPS in mathematics in both 2016 and 2017.⁵¹ Otherwise, the charter schools exhibited similar performance to JPS at best, and often scored significantly worse. Midtown’s 2017 performance places it at or near the bottom of JPS schools, and both Midtown and ReImagine saw dramatic declines in their English scores from 2016 to 2017.⁵² In fact, in 2017 two of the three schools received “D” ratings from the state Department of Education, and Midtown Public Charter School, received an “F” rating.⁵³ Midtown has also has been charged with poor planning in launching its operations, high staff turnover, and failure to provide services to special needs students.⁵⁴

The mediocre performance of existing charter schools thus far strongly suggests that they are not the education reform panacea Intervenors claim. In the meantime, dollars diverted to charter schools are unavailable to fund solutions that have a track record of helping struggling students. Mississippi can ill afford to squander these scarce public resources.

⁵¹ In 2016, 49% of Midtown students were rated below “passing” in English, compared with 46% of ReImagine students and 45% of JPS students. For mathematics, 47% of Midtown students scored below “passing” compared with 30% for ReImagine and 48% for JPS. Smilow was not tested in 2016 because it had not yet opened. Miss. Dept. of Educ., *2016 Student Assessment*, <https://bit.ly/2KP3zV9> (go to “2016 MAP Results”). In 2017, about 64% of Midtown students scored below “passing” in English, compared with 57% at ReImagine, 45% for Smilow, and 35% for JPS. For mathematics, over 75% of Midtown had over 75% students scored below “passing” compared with 31% for ReImagine, 43% for Smilow, and 43% for JPS. Miss. Dept. of Educ., *2017 Student Assessment*, <https://bit.ly/2MbDoxw> (go to “2017 Mississippi Academic Assessment Results”).

⁵² *Id.*

⁵³ Miss. Dept. of Educ., *2017 Accountability Report*, <https://bit.ly/2MmvrVj> (go to “2017 Accountability Report”).

⁵⁴ Kate Royals, “Midtown Experience is Lesson for Charter Schools,” *MISS. TODAY* (June 23, 2016), <https://bit.ly/2B3ycXg>; Kate Royals, “Charter Schools Struggle in First Year of State Tests,” *MISS. TODAY* (August 26, 2016), <https://bit.ly/2MaxrAZ>.

CONCLUSION

For the foregoing reasons, *amicus* the Mississippi Association of Educators respectfully asks that this Court reverse the judgment of the Chancery Court.

Respectfully submitted,

**MISSISSIPPI ASSOCIATION OF
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CERTIFICATE OF SERVICE

I, Jeremy Eisler, hereby certify that, simultaneous with its filing, a true and correct copy of the foregoing Brief of the Mississippi Association of Educators as *Amicus Curiae* in Support of Appellants was served on all counsel of record via the Court's electronic filing system.

SO CERTIFIED this 14th day of August 2018.

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